

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



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## Court of Appeals, District of Columbia

OCTOBER TERM, 1910

No. 2228.

784

MARY E. BIRCHETT, ADMINISTRATRIX *DE BONIS NON*  
OF THE ESTATE OF JESSE N. SEALE, DECEASED.  
AND ADMINISTRATRIX OF THE ESTATE OF SOPHIA  
SEALE, DECEASED, APPELLANT,

*vs.*

JERRY SEALE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF  
COLUMBIA.

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FILED SEPTEMBER 23, 1910.

# COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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# In the Court of Appeals of the District of Columbia.

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No. 2228.

MARY E. BIRCHETT, Adm'x, &c., Appellant,  
vs.  
JERRY SEALE.

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*a* Supreme Court of the District of Columbia.

No. 27955. Equity.

JERRY SEALE, Complainant,  
vs.  
MARY E. BIRCHETT, Administratrix, Defendant.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 *Bill.*

Filed July 24, 1908.

In the Supreme Court of the District of Columbia.

No. 27955. Equity.

JERRY SEALE, Complainant,  
vs.  
MARY E. BIRCHETT, Administratrix, Defendant.

To the Supreme Court of the District of Columbia, holding an equity court for said District:

The complainant, Jerry Seale, shows to the court as follows:

1. He is a resident of the City of Okolona, in the State of Mississippi, and sues in his own right as father and next of kin of the late Jesse N. Seale. The defendant Mary E. Birchett is sued as administratrix de bonis non of the estate of the said Jesse N. Seale, and also,

as administratrix of Sophia Seale, the original administratrix of the said Jesse N. Seale, as hereinafter more fully shown.

2. Heretofore, to wit, on the 11th day of November, A. D. 1907, the said Jesse N. Seale, who was the son of the complainant, departed this life, intestate, in the City of Washington, in the District of Columbia, where he then resided, leaving him surviving Sophia Seale, his widow, and, as his sole next of kin, the complainant, who is his father, the said Jesse N. Seale having died childless. The estate of the said Jesse N. Seale consisted of personalty, largely composed of a policy of life insurance, stocks, cash in bank and household furniture and effects, and aggregating the sum of about \$12,400.00.

3. Shortly after the death of the said Jesse N. Seale, to wit, on or about the 29th day of November, 1907, his said widow, Sophia Seale, came to your complainant at his home in Okolona, Mississippi, and stated to him that under the laws of the District of Columbia, with which laws he was wholly without familiarity, all the property of a man who died intestate and childless became the property of his father, and that she, said Sophia Seale, widow of complainant's son, had no property of her own, that she knew of; that she would be wholly dependent upon her own labor for her support; that she had applied for a position in a library in Washington, in which position, if she obtained it, she would earn enough for her own support; that she had brought to him a written instrument of assignment to her which had been sent to her by Mr. Charles H. Ackert, her husband's superior officer in the railway service in which he was engaged; that, unless the complainant signed it, she, his said daughter-in-law, would be left without a dollar of her late husband's estate; that he had been extravagant, had spent a great deal of money, and that, although he had a policy of insurance upon his life, he had borrowed a great deal of money, and had given the said policy as security therefor; that, when his debts were paid, there would be little left of his property, and that, by complainant's signing the said written instrument, court costs and the expenses of administration of his estate would be saved.

4. The complainant at the time of the visit of his daughter-in-law was about seventy-four years of age, in exceedingly feeble health, and, himself, in needy circumstances, but, being greatly grieved at the then recent death of his son, and believing the representations of the said Sophia Seale above set forth to be true in fact, having, himself, no knowledge whatever of the estate left by his son or of the condition of his financial affairs at the time of his death, he executed the said instrument in writing presented by her to him for the purpose, and, at her request, went with her to a notary public, who took his acknowledgment thereof, at the same time uniting with his wife in inviting her to come to and make her home with them in case she was unable to secure the position in Washington mentioned by her, offering to share their said home with her, which invitation the said Sophia Seale said she would accept if she failed to get the position in question, and, on receiving the said written instrument so executed by him, she returned to Washington, stating to complainant

and his family that she went there for the purpose of winding up her affairs, and would return and live with them in a short time, unless she succeeded in obtaining said position. The complainant executed the said paper writing without ever in fact reading it, having placed implicit confidence in the statements made to him by his said daughter-in-law, under the circumstances.

4        5. The said Sophia Seale has since, herself, departed this life, to wit on the 10th day of March, 1908, in the City of Washington, in the District of Columbia, intestate. The defendant Mary E. Birchett qualified as administratrix of the estate of the said Sophia Seale, and, thereafter, on the 25th day of March, A. D. 1908, applied to this honorable court, holding a probate court for said District, for letters of administration *de bonis non* upon the estate of the said Jesse N. Seale, and obtained them.

6. The complainant has recently learned that, as hereinbefore stated, his said son left an estate worth not less than \$12,400.00; that the representations by means of which the said Sophia Seale procured his execution of the said papers were wholly at variance with the facts as they were known by her to exist; that, under the laws in force in the District of Columbia, the said Sophia Seale was entitled to a one-half interest in the said estate, and the complainant to the remaining one-half; that, prior to her visit to Okolona, Mississippi, she was, herself, fully advised of the character and value of her said husband's estate, and shortly thereafter filed in the said probate court an application for letters of administration thereon, duly signed and sworn to by her, a copy of which application is herewith filed, marked Exhibit "A," and prayed to be read as a part hereof. On returning to Washington, after her said visit to complainant, she, further, filed in said court the paper writing executed by the complainant while she was with his family at Okolona, a copy of which is herewith filed, marked Exhibit "B," and prayed to be read as a part hereof, and which he is advised is a complete assignment of all his interest in the estate of his said son to the said Sophia  
5        Seale.

7. The complainant is advised and believes, and therefore avers, that he is entitled, in this court, under the facts and circumstances stated, to have the said transfer by him of his interest to the said Sophia Seale vacated and annulled, and to have the defendant Mary E. Birchett, administratrix *de bonis non* of said estate, in whose possession, as he is informed and believes, and therefore avers, all the said estate now is, account to him for his one-half share thereof, the execution of the said transfer by him having been secured by the said Sophia Seale by the representation that, without it, she would receive nothing from her husband's estate, that the assets of the said estate were small and the debts large, and that, without it, she would be left in a penniless condition, all and every of which representations he has since learned, and now avers, were wholly unfounded. The total indebtedness of his said son, exclusive of his funeral expenses, he is informed and believes, and therefore avers, did not exceed \$1,000.00, while, without any transfer or assignment from the complainant, the said Sophia Seale would have

been entitled as widow, in her own right, to some five or six thousand dollars, and, being unincumbered and without family responsibilities, she would have been in far better financial condition than the complainant himself would have been upon the division of the estate of his son equally between them as provided by law, all of which he avers was well known to her at the time she procured the execution by him of the said assignment to her, in the manner above stated.

6 Wherefore, and because he is without adequate remedy at law, complainant prays as follows:

1. That Mary E. Birchett, administratrix *de bonis non* of the said Jesse N. Seale and administratrix of the estate of the said Sophia Seale, may be served with process, made a party defendant hereto, and required to answer the exigency of this bill.

2. That the paper writing filed by the said Sophia Seale in the office of the Register of Wills or Probate Court of the District of Columbia, purporting to be an assignment from him to her of his interest in the estate of his said son, may be by decree of this honorable court vacated and declared to be null and void.

5. And that he may have such other and further relief as the nature of his case may require.

JERRY SEALE.

J. J. DARLINGTON, *Solicitor*.

STATE OF MISSISSIPPI,  
County of —, ss:

I, Jerry Seale, on oath say that I have read the foregoing bill by me subscribed, and know the contents thereof; that the allegations therein set forth as of personal knowledge are true, and that those set forth upon information and belief I believe to be true.

JERRY SEALE.

Subscribed and sworn to before me this 27th day of June, A. D. 1908.

[SEAL.]

T. W. HAMILTON, *Clerk*,  
By W. J. WILLIAMS, *D. C.*

7

EXHIBIT "A."

Filed December 23, 1909.

In the Supreme Court of the District of Columbia, Holding a Probate Court.

Administration. No. 14966.

In the Matter of the Estate of JESSE N. SEALE, Deceased.

To the Justice of the Supreme Court of the District of Columbia Holding a Probate Court:

Your petitioner, Sophia Seale, respectfully states to the court as follows:



1. She is a citizen of the United States and a resident of the District of Columbia, and files this petition in her own right, as the widow of the above named Jesse N. Seale.

2. Said Jesse N. Seale, late a citizen of the United States and a resident of the District of Columbia, died in the City of Washington, D. C., at which place he had his domicile at the time of his death, on the 11th day of November, 1907.

3. The decedent left surviving him as his only heirs at law and next of kin this petitioner, Sophia Seale, who is his widow, but he left no children, but left surviving him a father, Jerry Seale, living at Okolona, Mississippi, and no other next of kin, so far as your petitioner knows or is informed.

8        4. Petitioner further avers that decedent left no real estate in the District of Columbia, or elsewhere, but left stock in the Greensboro National Bank of North Carolina, of the par value of \$500.00, and also stock in the Citizens Savings Bank of Washington, D. C., of the par value of \$500.00, and cash in the same bank amounting to about \$905.00, and household furniture of the estimated value of \$500.00. The decedent left no debts so far as your petitioner is advised, except funeral expenses amounting to \$224.00, and the sum of \$1,000.00 borrowed upon a certain life insurance policy No. 973,241, in the New York Life Insurance Company of New York, which policy is for the sum of \$10,000.00 [and is payable to this petitioner as beneficiary, and which policy forms, as your petitioner is advised, no part of the decedent's estate].\*

5. Your petitioner further avers that the decedent left no last will and testament. She has inquired in such places and among such persons as would be likely to disclose the existence of a will, but she has found none, and so far as she knows the decedent died intestate.

The premises considered your petitioner therefore prays:

1. That letters of administration on the estate of the decedent may be granted to her.

2. And that she may have such other and further relief in the premises as may be necessary or to the court may seem proper.

SOPHIA SEALE.

9        I do solemnly swear that I have read the foregoing petition by me subscribed and know the contents thereof; that the matters and things therein stated on personal knowledge are true, and those stated on information and belief I believe to be true.

SOPHIA SEALE.

Jan'y

Subscribed and sworn to before me this 8th day of [November],\*  
A. D. 1908.

[COURT SEAL.]

JAS. L. DAVIS,  
*Circuit Clerk,*  
By T. P. DAVIS, D. C.

[\* Words enclosed in brackets erased in copy.]

Supreme Court of the District of Columbia, Holding Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court, do hereby certify, That the foregoing is a true copy of the original petition of Sophia Seale, for letters of administration filed in the office of the Register of Wills for the District of Columbia, Clerk of the Probate Court, in the matter of the estate of Jesse N. Seale, deceased, Case No. 14966 Admn. Doc. 37.

I further certify, That I have compared said copy with the original paper in said office, and find it to be a full, true and correct transcript thereof.

Witness my hand and the seal of the said Probate Court, this 22d day of December, A. D. 1909.

JAMES TANNER,  
*Register of Wills for the District of Columbia,  
Clerk of the Probate Court.*

10

EXHIBIT "B."

In the Supreme Court of the District of Columbia, Holding Probate Court.

Administration. No. 14966.

In re Estate of JESSE N. SEALE, Deceased.

In consideration of One dollar (\$1.00) to me in hand paid by Sophia Seale, I hereby transfer, set over and assign to the said Sophia Seale, widow of my son, the above named decedent, all my right, title and interest in and to his estate, and I do hereby release and forever discharge the said Sophia Seale, or any other person who may be appointed administrator of my said son's estate, from any accounting or liability to me by reason of the distribution of my portion of the said estate to the said Sophia Seale.

In testimony whereof I have hereunto set my hand and seal this 31st day of December, A. D. 1907, at Okolona, Mississippi.

JERRY SEALE, [SEAL.]  
*Father.*

Witness:

— — —.

STATE OF MISSISSIPPI,  
*Chickasaw County:*

Personally appeared before me, W. E. Savage, a Notary Public in and for the said County of Chickasaw, State of Mississippi, Jerry Seale, who acknowledged that he signed and delivered the foregoing instrument in writing, on the day and year therein written.

Given under my hand and official seal this 31st day of December, 1907, at Okolona, Mississippi.

[SEAL.]

W. E. SAVAGE,  
*Notary Public.*

My commission expires June 5, 1909.

11

*Answer.*

Filed November 19, 1908.

\* \* \* \* \*

The answer of Mary E. Birchett, administratrix de bonis non of the estate of Jesse N. Seale and administratrix of the estate of Sophia Seale, respectfully shows to the Court:

1st. Answering Paragraph 1 she says she is not advised as to the true relationship of the complainant to Jesse N. Seale, deceased. She admits her office respecting the estates of Jesse N. Seale and Sophia Seale as alleged in Paragraph 1.

2nd. Answering Paragraph 2, she is not advised as to the true relationship between the complainant and Jesse N. Seale, deceased, and requires strict proof of said relationship. She admits the other allegations contained in Paragraph 2 Complainant's Bill to be substantially correct.

3rd. Answering Paragraph 3 of complainant's bill, this defendant is not advised as to what transpired respecting the procuring of the assignment of Sophia Seale from complainant of his interests in his son's estate and therefore can neither admit nor deny the allegations contained therein and requires strict proof of the matters and things set forth in Paragraph 3.

4th. Answering Paragraph 4 Complainant's Bill this respondent has no personal knowledge of the matters and things set forth  
12 therein but is advised and believes that the said Sophia Seale practiced no fraud or made no representations in the procurement of the assignment to her from complainant of the interest in her deceased husband's estate and she therefore requires strict proof of the allegations contained therein.

5th. Answering Paragraph 5 of complainant's bill this defendant says that she admits the allegations contained therein.

6th. Answering Paragraph 6 of the complainant's bill this respondent says that she is not advised of the matters and things contained therein but avers the fact to be that the execution of the assignment referred to therein was not procured by any fraud or misrepresentation practiced by the said Sophia Seale upon complainant.

7th. Answering Paragraph 7 of Complainant's Bill this respondent denies the right of the complainant to have the assignment referred to in the Bill of Complaint vacated and annulled or to have this respondent account to the complainant for any portion of the estate referred to in complainant's bill. She is advised that she need not answer the other allegations contained in Paragraph 7.

Wherefore having fully answered respondent respectfully prays that she be hence dismissed with her reasonable costs in this behalf incurred.

MARY E. BIRCHETT.

WM. E. AMBROSE.

13 DISTRICT OF COLUMBIA, ss:

I, Mary E. Birchett, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof; that the matters and things therein stated of my personal knowledge are true and those stated on information and belief I believe to be true.

MARY E. BIRCHETT.

Subscribed and sworn to before me this 17th day of November, A. D. 1908.

My term expires June 27th, 1911.

[SEAL.]

FRANK B. NALL,  
Notary Public, City of St. Louis, Mo.

*Memorandum.*

December 28, 1908.—Replication,—filed.

*Depositions for Complainant.*

Filed April 29, 1909.

\* \* \* \* \*

William E. Ambrose, Esq., Solicitor for Defendant:

14 Please take notice that on Monday, the Fifth day of April, 1909, at one o'clock P. M., before H. L. Morrison, Esq., Mayor & ex officio Justice of the Peace and Notary Public of Okolona, Miss., at his office in Okolona, Mississippi, the depositions of T. P. Davis, Mrs. Lizzie Seale, Mrs. Lizzie Davis and Mrs. Sarah Smith and Jerry Seale, witnesses adduced on behalf of the complainant in the above entitled cause, and living beyond the District of Columbia, the address of each of whom is Okolona, Mississippi, will be taken on his behalf, at which time and place, and for which purpose you are invited to be present.

J. J. DARLINGTON,  
Solicitor for Complainant.

Service accepted this 25th day of March, A. D. 1909.

WILLIAM E. AMBROSE,  
T. B.,

Solicitor for Defendant.

\* \* \* \* \*

Met pursuant to notice, this the fifth day of April, 1909, at the residence of Jerry Seale, Okolona, Mississippi, present:

Wm. J. Berne, Counsel for complainant,

Wm. E. Ambrose, Counsel for the defendant.

The following witnesses were likewise present:

Jerry Seale, Mrs. Elizabeth Seale, Mrs. Elizabeth Davis, Mrs. Sarah Smith, and T. P. Davis, all of Okolona, Mississippi.

15 It is stipulated by the counsel for the complainant and defendant that H. L. Morrison, Mayor of Okolona, Missis-

issippi, and ex-officio a Justice of the Peace and Notary Public, may take the depositions of the witnesses above named, vice H. B. Lacy, and that the said depositions may be read subject to such objection of counsel as may appear therein as though the same had been taken before the said H. B. Lacy.

It is further stipulated that the depositions of Jerry Seale, complainant in the above entitled cause may likewise be taken, notwithstanding no adequate notice to that effect has been served upon defendant or counsel for her.

It is further stipulated that the reading over of the answers to the witnesses and the signatures of the witnesses to the depositions shall be waived, and the same shall be read at the hearing of this cause as though signed, et cetera.

It is furthermore stipulated that the depositions of the witnesses may be taken in shorthand, by A. F. Mecklenberger, and after being transcribed by the stenographer, transmitted to the clerk of the Supreme Court of the District of Columbia by the said H. L. Morrison.

Counsel for the defendant gives notice that he will move for the complainant to give bond, complainant being a non-resident, for the costs.

Mrs. ELIZABETH SEALE, sixty-eight years old, a resident of Okolona, Mississippi, being duly sworn deposes and says:

16 On direct examination by Mr. BERNE:

Q. About how long, Mrs. Seale, have you resided in Okolona? A. About fifty years I reckon. I have been living here thirty-four years, but in this county for fifty years.

Q. Are you acquainted with Jerry Seale, the complainant in this case? A. Yes, sir.

Q. What relation, if any do you bear to him? A. He is my husband.

Q. About how long, Mrs. Seale, have you been married to Jerry Seale?

Counsel objects as incompetent.

A. Thirty-four years.

Q. How many times was the said Jerry Seale married?

Counsel objects as immaterial.

A. Twice.

Q. Please state if there were any children by the first marriage?

A. Two.

Q. Please give their names. A. Newt. and Frank, J. N. Seale.

Q. Give the full name of Newt. A. Jesse Newton Seale.

Q. Were there any children by the second marriage?

Counsel objects as incompetent.

A. Yes, sir.

Q. Please give their names.

17 Counsel objects for the same reason.

A. Mrs. Smith, Mrs. Davis, and my son, Robert Seale.

Q. Is Jesse N. Seale living or dead? A. Dead.

Q. Where did he die? A. Washington City.

Q. Whereabouts, in what State? A. In the District of Columbia.

Q. About when did he die, Mrs. Seale? A. About the eleventh of November.

Q. About what year? A. 1907.

Q. Was J. N. Seale ever married? A. Yes, sir.

Q. How often was he married?

Counsel objects as the best evidence would be the marriage records, and moves to strike out the question and answer.

A. Only one time.

Q. How often was Jesse N. Seale married?

Counsel objects for the same reason.

A. Only one time.

Q. Please give the name of his wife. A. Sophia Seale. Sophia Spratt, she was.

Q. That was her maiden name, was it? A. Yes sir.

Q. Is this said wife living or dead? A. Dead.

18 Q. About when did she die? A. She died on the eleventh of March, 1908.

Q. Do you know where she died? A. She died in Washington, D. C.

(By COUNSEL FOR DEFENDANT:)

Q. Were you present when she died? A. I was not.

Q. Were you in Washington? A. I was not.

Counsel moves to strike out the question and answer relative to the death of Mrs. Seale for the reason that it is necessarily hearsay from the witness' own statement.

Q. Were you present at her funeral? A. Yes sir.

Q. About what time was her funeral held? A. Well, I suppose that it was the next day or two; I don't know exactly.

Q. What place was it held? A. Jackson, Tennessee.

Counsel objects for the same reason, and because there is no proof of identity.

Q. Was Mrs. Birchett, the defendant in this case present at that funeral? A. Yes, sir.

Q. Did she ever state to you that Mrs. Sophia Seale was dead?

Counsel objects as incompetent and immaterial.

19 A. Well, I don't know that she ever did. She saw that she was dead, and I don't know that she said to me that she was dead.

Q. What business was Jesse Seale in?

Counsel objects, and asks that the witness be cautioned that she

is not to testify as to matters and things that she does not know of her own knowledge. . Witness is so cautioned by counsel.

Q. (continued). If you know of your own knowledge, Mrs. Seale, please say what business J. N. Seale was engaged in at the time of his death. A. He was in the railroad business.

Q. About how old was J. N. Seale at the time of his death?

Counsel objects as incompetent.

A. He was forty-six.

Q. Is his mother living or dead?

Counsel objects as immaterial.

A. His mother is dead.

Q. About when did she die?

Counsel objects as immaterial.

A. I don't know, it has been so long.

Q. Give us your best recollection.

Counsel objects for the same reason.

A. I can't exactly remember.

Q. Can you fix it by any other event, with reference to your own marriage to Mr. Seale?

Counsel objects for the same reason, and because the question is leading.

20 Q. (continued). In other words, was J. N. Seale's mother dead or living at the time that you were married to Mr. Jerry Seale?

Counsel objects as incompetent, immaterial and leading.

A. She was dead.

Q. About how long had she been dead at the time of your said marriage?

Counsel objects for the same reason.

Q. (continued). To the best of your recollection? A. I can't recollect. I don't remember when she died.

Q. About how long had Jesse Seale been married to Sophia Seale at the time of his death? A. Twenty-three years, I think.

Q. Were any children born to Jesse Seale, and his wife, Sophia Seale? A. No.

Q. During their marriage, did Jesse Seale and his wife Sophia Seale ever visit in the home of Jerry Seale?

Counsel objects as incompetent.

A. Yes sir.

Q. Please state about how often.

Counsel objects for the same reason.

A. She came once every year, and he came often when he was on the Mobile and Ohio, when he lived at Jackson, Tennessee, or Mobile.

21 Q. Now, what were the apparent feelings between Jerry Seale and his family on the one side, and Jesse N. Seale and his wife on the other?

Counsel objects as wholly incompetent, suggestive and as asking for the opinion of the witness.

A. They were good so far as I knew.

Q. Were you present at the time of these various visits.

Counsel objects for the same reason.

A. Yes, sir.

Q. Now, after the death of Jesse Seale, did Mrs. Sophia Seale ever visit Mr. Jerry Seale's home in Okolona?

Counsel objects as leading and immaterial.

A. Yes, sir.

Q. When was that visit made?

Counsel objects for the same reason.

A. It was in November.

Q. November? A. December,—December 29th.

Q. What year? A. 1907.

Q. About how long did that visit last? A. About three weeks.

Q. Please give the day of the week and the day of the month that she came. A. She came on Sunday, the 29th of December.

Q. 1907? A. 1907.

Q. Do you recollect the hour of the day? A. Ten o'clock, about that if the train was——

22 Q. Morning or evening? A. Morning.

Q. Do you know Mrs. Sarah Smith and Mrs. Lillie Davis?

A. Yes, sir.

Q. What relation, if any, do they bear to you? A. My daughters.

Q. Tell where they resided at the time of this visit. A. With me.

Q. In your home? A. Yes, sir, at my home.

Q. At that time, where did Jerry Seale reside? A. He resided here.

Q. Were you present at the home of Jerry Seale when this visit of Sophia Seale was made? A. Yes, sir.

Q. Now, during that visit, Mrs. Seale, of Mrs. Sophia Seale, did she make any statement, to you, or in your presence concerning the financial condition of the estate of her deceased husband, Jesse Seale?

Counsel objects as incompetent, the statement of a deceased person.

A. Yes, sir.

Q. Did she make such statement more than once?

Counsel objects to any statement by this witness of any conversation had by her, or any other person with the decedent or any statement made by the decedent, Sophia Seale prior to her death.

23 A. Yes, sir, several times.

Q. Who was present when this statement was first made?



Counsel objects for the same reason.

A. Sally, Mrs. Geo. C. Smith.

Q. To whom was that first statement made?

Counsel objects on the same ground, and cites section 1064 of the code of the District of Columbia in support of his objection to this line of testimony.

A. To me.

Q. Now, please state what she said this first time, Mrs. Seale.

Counsel objects for the same reason.

A. Well, I asked her the question how did,—I suppose Newt. had left her in a good fix. She said mother I don't know. He had life insurance but I don't know the amount. Neither do I know how much he had borrowed. He had borrowed money on it, but I don't know how much. You know he was very extravagant and left very little. He had that life insurance, but he had borrowed on it.

Q. And the second time that statement, when was it made the second time?

Counsel objects for the same reason.

A. It was made Monday evening, the next day, the 30th.

Q. Of what month and year? A. Of December, 1907.

Q. Who was present when that second statement was made?

24 Counsel objects for the same reason.

A. Why, Lillie Davis, myself and Jerry Seale.

Q. To whom was that second statement made?

Counsel objects for the same reason.

A. To Mr. Seale.

Q. Please repeat this second statement.

Counsel objects to this line of examination as it seeks to adduce a line of testimony that is prohibited by law, and is therefore incompetent to prove any issue in this case.

A. Well, she went in my room, and she said "Father, I have a paper that Mr. Ackert sent me, and unless you sign the paper, I can't receive, I can't get a dollar of money on it", and she further said that according to the law of the District of Columbia, all of the property would go to the father, and unless you sign this, why I can't get a dollar of Newt.'s estate; that that was the law of the District of Columbia. He said that he couldn't do it to-day——

By COUNSEL: Well, I will ask you about that later, about what he said.

Counsel moved to strike out the above answer as it is incompetent, being the statement of a deceased party to the transaction.

Q. You state that this statement was made to "Father". Whom do you mean when you say "Father?"

Counsel objects for the same reason.

A. I mean Sophia said it to Mr. Jerry Seale.

25 Q. Did Mrs. Sophia Seale, in your presence, ever make any statements as to the law of inheritance in the District of Columbia?

Counsel objects as incompetent.

A. Yes, sir.

Q. When was that statement made?

Counsel objects for the same reason.

A. On Monday after the Sunday, the 30th.

Q. Where was that statement made?

Counsel objects as immaterial.

A. In my bedroom.

Q. In this residence in Okolona? A. Yes, sir.

Q. To whom was that made?

Counsel objects for the same reason.

A. Jerry Seale.

Q. In whose presence was it made?

Counsel objects for the same reason.

A. Mrs. Davis, myself and Mrs. Smith.

Q. Did Mrs. Sophia Seale ever make any statement in your presence as to whom the property of her deceased husband descended under the laws of the District of Columbia?

Counsel objects on the ground previously stated. The question is leading and suggestive. Further, that the testimony is incompetent and immaterial, and not permissible under the laws governing the admissibility of evidence in the District of Columbia.

A. She did.

Counsel moves to strike out the answer.

Q. When did she make this statement?

Counsel objects as immaterial.

26 A. On Monday.

Q. Give the day of the month? A. The 30th of December, 1907.

Q. Where did she make that statement?

Counsel objects for the same reason.

A. In my room.

Q. In the Seale residence? A. In my room in the residence, yes, sir.

Q. To whom was that statement made?

Counsel objects for the same reason.

A. Mr. Jerry Seale.

Q. Please repeat that statement.

Counsel objects as incompetent, immaterial and irrelevant, and not permissible under the laws governing the rules of the admissibility

of evidence in the District of Columbia, the same being a statement of the deceased person.

A. To my husband, Mr. Seale.

Counsel moves to strike out the answer.

Q. Did Mrs. Sophia Seale, at the time of her said visit, ever make in your presence any statement as to her own financial condition at that time?

Counsel objects as incompetent, immaterial, not germane to the issue joined in this case, and as prohibited by the law governing the admissibility of evidence in the District of Columbia.

A. She certainly did.

Q. When was that statement made?

Counsel objects as immaterial.

27 A. Monday.

Q. That is, December 30th? A. Yes, sir, on that day, Monday, December 30th.

Q. Where was it made? A. In my room.

Q. Where is your room? A. In our residence.

Q. To whom was that statement made? A. It was made to Mr. Jerry Seale.

Q. Who was present? A. Mrs. Davis, myself, Mrs. Smith and Sophia.

Q. Please repeat that statement.

Counsel objects to this question on the ground that it is incompetent, and because it seeks to adduce testimony relative to a conversation, or an agreement of a deceased person with the complainant, and is immaterial to the issue joined here.

A. Well, she said that she didn't have anything, as I have told you a time or two, and unless he signed these papers that she couldn't touch a dollar. She said she did not have anything unless he signed this paper.

Q. When was that statement made with reference to the time of her asking Mr. Seale to sign, to which you have testified?

Counsel objects as leading and incompetent.

A. On Monday, the 30th.

Q. With reference to the time of handing Mr. Seale this instrument, and asking him to sign it, when did she make this statement?

28 Counsel objects for the same reason.

A. On Monday.

Q. Yes, I know it was on Monday, but was it made at the time she handed him the paper to be signed, or at another time?

Counsel objects as leading.

A. She asked him to sign it.

Q. At the time, when was it that she made this statement of her

own financial condition with reference to her handing him the paper? A. On Sunday.

(By COUNSEL:) I don't mean that.

Counsel objects to counsel's interrupting the witness, and states that the witness should answer the question as she understands it, and then the question may be re-put.

Q. Now, Mrs. Seale, to get the matter clearly before you, you have testified that Mrs. Sophia Seale made a statement as to her financial condition at the time of her visit, and that she made it on Monday, December 30, 1907. You have also testified that on the same day Mrs. Sophia Seale requested Mr. Jerry Seale to sign an instrument. Now, then, with reference to the time of her asking Mr. Jerry Seale to sign this instrument, when did she make this statement as to her own financial condition?

Counsel objects to counsel's cross examination of his own witness, to the leading character of the question, to its immateriality and incompetence.

A. Well, she told me that in the evening.

29 —. Is that right? A. I don't know, that it what she said.

Q. Did Mrs. Sophia Seale ever make, in your presence, any statement as to her obtaining employment?

Counsel objects as incompetent.

A. Yes, sir.

Q. When did she make that statement?

Counsel objects as immaterial and incompetent.

A. Well, she made it several times.

Q. About when? A. When she was on that visit here.

Q. That you have testified about? A. Yes, sir.

Q. Where did she make that statement?

Counsel objects as immaterial.

A. She made it in the parlor, in this room.

Q. In Mr. Jerry Seale's Residence in Okolona, Mississippi? A. Yes, sir.

Q. Under what circumstances was that statement made?

Counsel objects for the same reason.

A. She said she didn't have anything, and unless he signed this paper—but I have testified as to that.

Q. Now, what reason, if any, did Sophia Seale give for seeking employment?

Counsel objects as incompetent.

A. Well, she didn't have enough to live on.

Q. Now, did Sophia Seale, in your presence, ever request Jerry Seale to sign any instrument in writing?

30 Counsel objects as leading, incompetent and immaterial.

A. Yes, sir.

Q. Did she, at the time of making that request, state what that instrument was?

Counsel objects for the same reason.

A. She said that it was an instrument that Mr. Ackert had sent her.

Q. Did she make any statement——?

Counsel objects.

A. She certainly did. She come in the room on Monday, and she said "I have an instrument that Mr. Ackert sent me for you to sign, and unless you do sign it, I can't draw a dollar of Newt's estate. Under the laws of the District of Columbia it goes to his father."

Counsel moves to strike out the answer as being unresponsive to the question, as being incompetent on account of its being the statement of a deceased person, made pursuant to the relation existing between that deceased person and the complainant in this case, and that it is prohibited under section 1064 of the code of laws of the District of Columbia.

Q. Now Mrs. Seale, when Mrs. Sophia Seale requested Mr. Jerry Seale to execute that instrument of writing of which you have testified, please state what, if anything, she said in connection with that request.

Counsel objects for the same reason.

31 A. She told him that she didn't have anything, and I don't know—. Well, she said, "Father, this is a paper that I want you to sign. Mr. Ackert sent me the paper and wants you to sign it. The District of Columbia gives everything that your son owned to you, Newt to you, his estate."

Q. Who was present when this statement was made?

Counsel objects for the same reason.

A. Mrs. Lillie Davis, myself and Mrs. Smith.

Q. Did Mr. Jerry Seale make any reply to this statement?

Counsel objects on the ground that the question is incompetent and immaterial.

A. Yes, sir.

Q. What reply did he make?

Counsel objects for the same reason.

A. He told her that he wasn't able to sign it that evening, that was Monday evening the 30th, but he would execute it the next day.

Q. Did he ever execute that instrument? A. Yes, sir.

Counsel moves to strike out this question and answer as incompetent.

Q. What did he do with it after he executed it, if anything?

Counsel objects for the same reason.

A. He gave it to Sophia.

Q. Do you know what she did with it, if anything, of your own personal knowledge? A. I did not see it.

32 Q. Now Mrs. Seale, please state whether or not this statement made by Mrs. Sophia Seale to Mr. Jerry Seale appeared to have any effect upon Mr. Jerry Seale.

Counsel objects to the question and doesn't deem it necessary to state any grounds.

A. Yes, sir.

Q. How did he seem to be affected?

Counsel objects as asking for the opinion of the witness.

A. He burst into tears.

Q. During this visit to the home of Mr. Jerry Seale by the said Mrs. Sophia Seale, of which you have testified, was an invitation of any kind extended to Mrs. Sophia Seale?

Counsel objects as incompetent and immaterial.

A. Yes, sir.

Q. What was that invitation?

Counsel objects for the same reason.

A. Well, it was for her to come and make us a visit.

Q. Please state whether or not anything was said as to the length of the visit.

Counsel objects as incompetent, suggestive and leading.

A. No, sir.

Q. For what reason, if any, was this invitation extended?

Counsel objects for the same reason.

A. Simply because we would have liked to have had her.

Q. How long have you known Jerry Seale? A. Well, a number of years.

33 Q. About how long? A. I reckon forty-five years,—you mean my Jerry, about forty or forty-five years I reckon.

Q. Where has he resided during that time? In and around Okolona? A. Yes, sir.

Q. What has been his business during that time? A. He has been in the railroad business most of the time.

Q. Has he ever studied or practiced law?

Counsel objects as incompetent and immaterial.

A. No, sir.

Q. Within your knowledge, has he ever been in the District of Columbia?

Counsel objects as incompetent and immaterial.

A. No, sir.

Q. Within your knowledge, has he ever had any business transactions in the District of Columbia?

Counsel objects for the same reason.

A. No, sir.

Q. Within your knowledge, has he ever had any business transactions that were affected by the laws of the District of Columbia?

Counsel objects as incompetent and immaterial.

A. No, sir.

Q. Prior to the visit of Mrs. Sophia Seale, to which you have testified, did you ever hear Mr. Jerry Seale discuss any of the laws of the District of Columbia?

Counsel objects as incompetent and immaterial.

A. No, sir.

34 Q. Did Mr. Jerry Seale ever execute more than one instrument of writing for Mrs. Sophia Seale?

Counsel objects as incompetent and immaterial.

A. No, sir.

Q. Now Mrs. Seale, you have testified to Mrs. Sophia Seale's having made statements to you on Sunday, the day on which she arrived. Did you ever communicate to Mr. Jerry Seale these aforesaid statements or any of them?

Counsel objects as incompetent and immaterial.

A. Yes, sir.

Q. When did you do so?

Counsel objects for the same reason.

A. I told him that night.

Q. What reply, if any, did he make?

Counsel objects for the same reason.

A. Well, I don't know that he made any reply.

Q. Now Mrs. Seale, during the month of December, 1907, and January, 1908, what was the physical condition of Mr. Jerry Seale, and what was the general state of his health?

Counsel objects as incompetent and immaterial.

A. His health was bad.

Q. Was he able at those times to leave home?

Counsel objects as incompetent and immaterial.

A. No, sir, not much.

Q. About how long had he been in that condition?

Counsel objects for the same reason.

A. About a year, I reckon, from February until the present.

35 Q. Please state whether or not, at the time of this visit of Mrs. Sophia Seale, he was confined to his home on account of illness?

Counsel objects as incompetent and immaterial.

A. Yes, sir.

Q. For about what length of time had he been so confined to his home up to that time?

Counsel objects for the same reason.

A. Well, he has been confined most of the time since he quit work in February.

Q. What year? A. It seems,—I don't know.

Q. The same year of the visit? A. Yes, sir.

Q. 1907? A. Yes, sir, 1907.

Q. Did the death of Jess. N. Seale appear to affect Mr. Jerry Seale?

Counsel objects as calling for the opinion of the witness, and as being incompetent and immaterial.

A. Yes, sir.

Q. To what extent, and for about how long after the said death was Mr. Jerry Seale so affected?

Same objection.

A. Well, he never has gotten over it.

Q. What evidences of grief did he manifest?

Same objection.

A. Well, he was very much affected all of the time, whenever his name was mentioned.

Q. How was he affected?

36 Same objection.

A. He would burst into tears.

Q. Were any of these evidences of grief manifested during the visit of Mrs. Sophia Seale?

Counsel objects as leading, immaterial and incompetent.

A. Yes, sir.

Q. To what extent were they manifested?

Same objection.

A. Well, he was grieved at the time dreadfully about it.

Q. What is Mr. Jerry Seale's age; about how old is he? A. He is seventy-six I think.

Q. At the time of Mrs. Sophia Seale's visit, what property, if any did Jerry Seale own? A. He didn't own any but his home.

Q. At the time of the said visit, in what business was he engaged.

Same objection.

A. None at all.

Q. At the time of that visit, in what business, if any were you engaged?

Same objection.

A. Keeping a boarding house.

Q. For what reason?

Same objection.



A. To make a living.

37 Q. Mrs. Seale, were you present when Mr. Jerry Seale first saw Mrs. Sophia Seale when she first arrived on this visit.

Counsel objects as the matter has been gone into two or three times prior, and is incompetent and immaterial.

A. Yes, sir.

Q. Describe how he appeared and acted, and what he said and did when he first saw her.

Counsel objects as incompetent and immaterial and asking for the opinion of this witness.

A. He grabbed her around the neck and kissed her. I don't think that he said anything, and burst into tears.

Q. When Mrs. Sophia Seale requested Mr. Jerry Seale to execute the written instrument of which you have testified, describe how Mr. Jerry Seale appeared and acted, and state what, if anything, he said and did.

Counsel objected as incompetent and immaterial, and as having already been gone into at length. As suggested- and immaterial.

A. He burst into tears.

Q. If he said anything, please state what that was.

Counsel objects as the question is suggestive on the part of counsel.

A. He told her that he would sign the paper the next day. He wasn't able to go to town then.

No cross-examination.

Witness Dismissed.

38 Counsel for the defendant moves to strike out the testimony of the witness in so far as it relates to conversations on the part of Mr. Jerry Seale, the complainant, and Mrs. Sophia Seale, the decedent, relative to the transactions which constitute the issue in this case; and further move- to strike out all testimony as to the condition of Mr. Jerry Seale at the time of the visit of Mrs. Sophia Seale, beginning the twenty-ninth of December, 1907, and extending over a period of several weeks subsequent thereto, on the ground that the testimony is incompetent to prove any issue in this cause, and falls under the prohibition of testimony as to statements of deceased persons, parties to such transactions.

JERRY SEALE, seventy-five years old, a resident of Okolona, Mississippi, being duly sworn, deposes and says:

On direct examination by Mr. BERNE:

Q. About how long have you resided in Chickasaw County, Mississippi, Mr. Seale? A. I moved here, sir, in '36, in December, '36.

Q. How many times, Mr. Seale, have you been married? A. Twice.

Q. What children, if any, did you have by the first marriage? A. Frank and Jesse Seale. J. N. Seale was his initials.

Q. What was J. N. Seale's full name? A. Jesse Newton Seale, and Frank's name was Frank James Seale.

Q. Name the children by the second marriage.

39 Counsel objects as immaterial.

A. Robert McCraley Seale, Sallie George Seale, Lillie (I don't know what her other name is—Lillie Bell I think it is).

Q. Is the said Jesse N. Seale living or dead? A. He is dead, sir.

Q. Where did he die? A. He died in Washington, on the eleventh of November, sir.

Q. What year? A. 1907.

Q. Was J. N. Seale ever married? A. Yes, sir.

Q. How often? A. Once.

Q. Were you present at the marriage? A. I was, sir.

Q. Where did it occur? A. In Aberdeen, in the Episcopal Church.

Q. What State? A. Aberdeen, Mississippi.

Q. About what time, Mr. Seale? A. Well, when you hit me on dates, I don't know.

Counsel for the defense admit the marriage of J. N. Seale, and his death.

Q. Now Mr. Seale, give the name of the wife of Jesse N. Seale.

A. Sophia Spratt.

40 Q. Is she living or dead? A. Well, sir, I got the telegram——

Counsel for the defense admit her death.

The following questions were put by the counsel for the complainant to the counsel for the defense:

Q. Do you admit when, and where she died? A. Yes, sir, I admit all of that as a matter of record.

Q. And that he was engaged in the railroad business, and his age? A. Yes, sir, I will admit that.

Q. That his mother is dead? A. Yes.

Q. That he had no children? A. Yes, that they died without issue.

Q. And will you admit that Mr. Jerry Seale's first wife died four years or more before the second marriage? And also that Sophia Spratt and Jesse N. Seale were married about 1886? A. Yes, I will admit that, too.

Examination of witness JERRY SEALE continued:

Q. Now, Mr. Seale, during the marriage of Jesse Seale and his wife, did they ever make you a visit or visits? A. O, yes, they came here. Sophia came once a year, all of the time, sir, and Newt. every time he got a chance. I can't keep the dates.

Q. To whom do you refer when you say Newt.? A. J. N. Seale.

41 We all called him that—everybody here in town called him that. Jesse Newton Seale was his name.

Q. Now, after the death of Jesse Seale, did Sophia Seale ever visit you at your residence in Okolona, Mississippi?

Counsel objects as immaterial.

A. Yes, sir.

Q. When was that visit made, Mr. Seale? A. Well, she came here on the 29th day of December, 1907.

Q. About how long did she remain? A. About three weeks, or something about that, I don't know the exact date.

Q. On what day did she arrive, a day of the week, Mr. Seale? A. On Sunday.

Q. About what time of the day? A. She came on the ten o'clock train.

Q. In the morning or evening? A. In the morning, on No. 3.

Q. Were you at home when she visited you? A. Yes, sir, I was in my room.

Q. Mr. Seale, have you ever been in Washington, D. C.?

Counsel objects as immaterial.

A. I went through there once. I was going on to New York to buy goods; I didn't stop there.

Q. Was that time that you passed through the only time that you were ever in the District? A. Yes, sir, I passed right through.

42 Q. Have you any knowledge of the laws of the District of Columbia?

Counsel objects as immaterial.

A. I don't know anything about the laws, not a particle, sir.

Q. Did you ever execute any instrument of writing at the request of Mrs. Sophia Seale?

Counsel objects, the best evidence being the instrument itself.

A. Well, I did, sir, yes, sir, I did.

Q. Did you execute more than one?

Counsel objects as incompetent and immaterial.

A. Only one, sir.

Q. Do you recollect about when you executed that instrument?

Counsel objects as incompetent and immaterial.

A. Why, it was on the 31st of December, 1907.

Q. During the months of December, 1907, and January, 1908, what was your physical condition and the state of your general health?

Counsel objects as incompetent and immaterial.

A. Well, I had bronchial grippe and nervous prostration, and I wasn't able to get out at all, hardly at all.

Q. How long had you been in that condition? A. I was taken down, sir, last February, two years ago. I got helpless; I got so that

I couldn't write my name, or work in the depot, and I just had to quit, and I have been so ever since. I barely can write my name, now.

43 Q. During this visit of Mrs. Sophia Seale, what was your physical condition as to being able to go away from home?

Counsel objects as incompetent and immaterial.

A. I couldn't get about, hardly, that is, to go down town, but I did go there for her; I went to Ed. Savage to sign that paper for her; I couldn't do anything more.

Q. At the time of Jesse Seale's death, did you know of any property that he owned? A. No, sir, I did not.

Q. Do you know what salary he was getting at that time? A. I never knew anything; I never asked him in my life about what he got.

Q. When did,—about when, did Jesse Seale leave home permanently? A. O, well, he left, sir, in his childhood. It is too long ago. He went to work on the railroad, and was away from home.

Q. Did Jesse Seale ever discuss his financial condition with you? A. Never.

Q. Now, Mr. Seale, at the time that Sophia Seale visited you, about which you have testified, please state what was your belief in her honesty and truthfulness at that time.

Counsel objects as incompetent and immaterial.

A. Well, sir, I thought that she was honest, fair and square.

44 Cross-examination.

By Mr. AMBROSE:

Q. Mr. Seale, didn't your son, Jesse Newton Seale, leave home when he was about thirteen years of age? A. Well, I can't answer that question, I don't recollect. It is too long ago for me to recollect.

Q. Was he as old as fifteen? A. I don't know, sir, I don't. I wouldn't swear.

Q. He was somewhere from thirteen to fifteen, wasn't he? A. Somewhere from twelve to fifteen, I don't know.

Q. Mr. Seale, from the time that he left, he made his own way, didn't he? A. Not all of the time.

Q. Did he ever return home? A. He came home often, sir, every time he got a chance.

Q. Didn't he obtain a position through Mr. Birchett, on the Mobile and Ohio when he left home. A. No, sir, he obtained a place through Cecil Fleming.

Q. And he retained that position how long? A. I can't tell you, sir, how long. I don't know.

Q. When he left that position, he took up—— A. From that he got to be a dispatcher.

Q. And from that, what? A. From that, trainmaster.

Q. Was he ever, at any time, after he left home, un-  
45 employed for any time? A. One time. He went to New Orleans as a train dispatcher, I forget now whether it was for the railroad or for the Western Union, and they had a strike, and he went out with the boys, and was out of work for a little while, but not for long.

Q. He earned a salary all of the time that he was employed?  
A. I suppose so. I never knew anything about his salary.

Q. Were you, at any time, after he left home, called upon to finance him? A. Yes, sir, I have been called upon several times.

Q. For how much? A. Well, I don't recollect, now, exactly.

Q. He paid you back, didn't he? A. Never.

Q. He never gave you any money at all, did he? A. Not a bit, no, sir, not a dollar.

Q. Not up to the time that he died? A. No, sir, I never asked him.

Q. Did he ever send any to your wife? A. Never.

Q. Any at all? A. Not that I ever knew.

Q. How much in the aggregate, approximately, did you let him have after he left home, when he was thirteen or fifteen? A. I recollect paying thirty-five dollars one time. He was in Florida,  
46 and somebody down there sent home for money for him, and I had to pay it for him.

Q. What year? A. I don't recollect.

Q. Was there as much as thirty-five dollars more? A. Yes, sir, more than that, but I can't swear.

Q. Was there as much as one hundred dollars? A. O, well, I can't tell you.

Q. Did Mrs. Sophia Seale ever send any money here? A. No, sir, never that I ever heard tell of—never a dollar.

Witness dismissed.

Counsel for the defendant moves to strike out the testimony of the witness in so far as it relates to conversations on the part of Mr. Jerry Seale, the complainant, and Mrs. Sophia Seale, the decedent, relative to the transactions which constitute the issue in this case; and further moves to strike out all testimony as to the condition of Mr. Jerry Seale at the time of the visit of Mrs. Sophia Seale, beginning the twenty-ninth of December, 1907, and extending over a period of several weeks subsequent thereto, on the ground that the testimony is incompetent to prove any issue in this cause, and falls under the prohibition of testimony as to statements of deceased persons, parties to such transactions.

Mrs. LILLIE SEALE DAVIS, twenty-eight years old, a resident of Okolona, Mississippi, being duly sworn, deposes and says:

47 On direct examination by Mr. BERNE:

Q. You reside in Okolona, Chickasaw County, Mississippi? A. yes, sir.

Q. About how long have you resided here? A. All of my life. I never lived anywhere else.

Q. What relation, if any, are you to Mr. Jerry Seale? A. Daughter.

Q. And to Mrs. Lizzie Seale? A. Daughter.

Q. Did you know Jesse N. Seale? A. Yes, sir.

Q. About how long had you known him? A. Well, all of my life.

Q. You know also his wife, Mrs. Sophia Seale? A. Yes, sir.

Q. During their lifetime, did Jesse N. Seale and his wife or either of them ever visit Mr. Jerry Seale? A. Yes, sir.

Q. Where did you make your home in November and December, 1907 and January, 1908? A. Right here in this house.

Q. Whose residence? A. The residence of Mr. Jerry Seale.

Q. At that time, and for how long prior to that time, had you been making your home here? A. All of my life.

48 Q. Were you present when Jesse Seale and his wife, or either of them visited Mr. Jerry Seale? A. Yes, sir.

Q. What was the apparent feeling between Mr. Jerry Seale and his family on the one side and Mr. Jesse N. Seale and his wife on the other?

Counsel objects as incompetent and immaterial.

A. Well, they were just as friendly and affectionate as anyone could be in the relationship they were to us.

Q. Now, after the death of Mr. Jesse N. Seale, did Mrs. Sophia Seale ever visit Mr. Jerry Seale? A. Yes, sir.

Q. When was that visit made? A. She came on the twenty-ninth day of December, 1907.

Q. What day of the week? A. Sunday.

Q. Do you recollect the hour? A. Yes, sir, ten o'clock.

Q. Were you present in the home of Mr. Jerry Seale during that visit? A. Yes, sir.

Q. During that visit did Mrs. Sophia Seale make any statement to you, or in your presence, concerning the financial condition of her deceased husband's estate?

Counsel objects as incompetent and immaterial.

A. Yes, sir.

Q. Did she make such a statement more than once?

Counsel objects for the same reason.

A. Yes, sir.

49 Q. Who was present when the first statement was made?

A. Well, the first statement was to my mother.

Q. I am just asking you who was present. A. My mother, my sister and myself.

Q. When did she make that statement? A. She made it on Monday after she came.

Q. To whom did she make it? A. To my mother.

Q. In whose residence? A. In Mr. Jerry Seale's residence.

Q. What did she say at that time?

Counsel objects as incompetent and immaterial, as asking for a line of testimony that is prohibited by section 1064 of the code of laws of the District of Columbia.

A. Well, she said that she didn't know that she would have anything,—that Newt. had been very extravagant, and had spent a great deal of money. She said that he had left an insurance policy, but she didn't know the amount. He borrowed money on the policy, and had given it as security, and she didn't know the amount he had borrowed, and she would have little or nothing, and would have to work for her living. That was all as to the condition of his estate,—that she didn't know what he had left.

Q. Did she say anything more as to the condition of the estate.

A. She said she didn't know anything about it at all.

Q. Did Mrs. Sophia Seale, during that visit, ever make any statement in your presence as to the law of inheritance of the District of Columbia?

50 Counsel objects as incompetent and immaterial, and as asking for a line of testimony prohibited by section 1064 of the code referred to.

A. Yes, sir.

Q. Please state when that statement was made.

Same objection.

A. It was made on Monday, the 30th day of December.

Q. Where was it made?

Same objection.

A. In Mr. Jerry Seale's residence.

Q. To whom was this statement made?

Same objection.

A. To Mr. Jerry Seale.

Q. In whose presence was it made?

Same objection.

A. It was made in the presence of Mrs. Seale, myself and Mrs. Smith.

Q. State the names. A. Mrs. Lizzie Seale, Mrs. Sarah Smith and Mrs. Lillie Davis.

Q. Under what circumstances was it made?

Same objection.

A. It was made when she came in with the paper that she wanted Mr. Seale to sign. It was made in that connection.

Q. Now please repeat that statement.

Counsel objects as incompetent and immaterial, and as asking for a line of testimony prohibited by section 1064 of the code of law of the District of Columbia.

51 A. She said that when a man died without a will or children in the District of Columbia, his entire estate went to his father.

Q. Now did Mrs. Sophia Seale, during that visit, make any statement as to whom the property of her deceased husband descended at his death, under the laws of the District of Columbia?

Same objection.

A. Yes, sir.

Q. Now when did she make that statement?

Same objection.

A. Same time, in connection with handing the paper to Mr. Jerry Seale.

Q. That was on Monday? A. Yes, sir.

Q. To whom was that statement made?

Same objection.

A. To Mr. Jerry Seale.

Q. Who was present?

Same objection.

A. Mrs. Lizzie Seale, Mr. Jerry Seale, Mrs. Lillie Davis and Mrs. Sarah Smith.

Q. And what was said by Mrs. Sophia Seale?

Counsel objects as incompetent and immaterial.

A. She said it descended to Mr. Jerry Seale.

Q. During that visit, did Mrs. Sophia Seale ever make any statement in your presence as to her financial condition at that time?

52 Counsel objects as incompetent and immaterial.

A. Yes, sir.

Q. When did she make that statement?

Same objection.

A. She made it on Monday, December 30th, 1907.

Q. Where did she make it? A. In the residence of Mr. Jerry Seale.

Q. To whom was it made?

Same objection.

A. To Mr. Jerry Seale.

Q. Who was present?

Same objection.

A. The same parties, Mrs. Lizzie Seale, Mr. Jerry Seale, Mrs. Lillie Davis and Mrs. Sarah Smith.

Q. Please repeat the statement.

Same objection, incompetent and immaterial and prohibited by section 1064 of the code referred to.

A. She said she wouldn't have, she didn't have anything at all.



Q. Now, during that visit, did Mrs. Sophia Seale ever make any statement in your presence as to her obtaining employment?

Counsel objects as incompetent and immaterial.

A. Yes, sir.

Q. When did she make this statement?

Same objection.

A. On Monday, December 30th, 1907.

Q. Where did she make it?

53 Same objection.

A. In Mr. Jerry Seale's residence.

Q. Who was present?

Same objection.

A. Mrs. Lizzie Seale, Mr. Jerry Seale, Mrs. Sarah Smith and Mrs. Lillie Davis.

Q. Under what circumstances was it made?

Same objection.

A. It was made when she gave the paper for papa, Mr. Jerry Seale, to sign.

Q. What reason, if any, did she give for seeking employment?

Same objection.

A. Because she said she didn't have anything to live on.

Q. During that visit, did Mrs. Sophia Seale, in your presence, ever request Mr. Jerry Seale to execute any instrument of writing?

Same objection.

A. Yes, sir.

Q. Did she state what that instrument was?

Same objection.

A. No, sir, she said that it was a paper, that the estate all went to him, and unless he signed this paper she couldn't touch a dollar of the estate, Newt's estate.

Q. What, if anything, did she say in connection with this request?

Same objection.

54 A. She said, "Father, here is a paper that Mr. Ackert sent me for you to sign." She said, "If you will sign it, it will save the court costs, and the costs of administering on the estate, and of course, that Newt. was very extravagant and she didn't know that he had left anything. That he had a policy of life insurance, but she didn't know how much, that he had borrowed money on same, and deposited it as security, but she didn't know the amount that he had borrowed, and that she would have little if anything, and that she would have to work for a living.

Counsel moves to strike out the answer on the ground that it is incompetent.

Q. When was that request made? A. It was made on Monday, December 30th, 1907.

Q. Where was it made?

Same objection.

A. In the residence of Mr. Jerry Seale.

Q. Who was present?

Same objection.

A. Mrs. Lizzie Seale, Mr. Jerry Seale, Mrs. Sarah Smith, and Mrs. Lillie Davis.

Q. What reply, if any, did Mr. Jerry Seale make?

Same objection.

A. Why, he told her that he was very weak, and not able to execute it at that time, and if she would keep it until the next morning, if he was able, he would sign same.

Q. Did she hand him this instrument?

Counsel objects as incompetent and immaterial.

55 A. No, sir, she didn't hand it to him.

Q. Did she read it to him in your presence?

Counsel objects as incompetent and immaterial.

A. No, sir.

Q. Now, please state whether this statement and this request that you have just testified about, appeared to have any effect on Mr. Jerry Seale.

Counsel objects as incompetent and as asking for the opinion of the witness.

A. Why, yes, sir.

Q. Now, then, you can go on and tell how he appeared to be affected.

Counsel objects as incompetent and as calling for the opinion of the witness.

A. Well, he appeared to be heartbroken, and he burst into tears. He cried all during the time that she was in there.

Q. As I understand, this request was made to Mr. Jerry Seale?

A. Yes, sir.

Q. During this visit of Mrs. Sophia Seale, to which you have testified, was an invitation of any kind extended to her?

Counsel objects as incompetent and immaterial.

A. Yes, sir.

Q. What was the invitation?

Same objection.

56 A. The invitation was to have her make her home with Mr. Jerry Seale and Mrs. Lizzie Seale free of expense and cost to her.

Q. Was any time limit set for her making her home?

Same objection.

A. All her life, if necessary, as long as she wanted to live with them.

Q. By whom was it extended?

Counsel objects as incompetent and immaterial.

A. It was extended by Mr. Jerry Seale and Mrs. Lizzie Seale.

Q. For what reason, if any, was it extended?

Same objection.

A. Because they supposed she didn't have anything and would have to work for her own living.

Counsel objects on the ground that this is a mere opinion on the part of the witness, and moves the Court to strike it from the deposition.

Q. Did Mrs. Sophia Seale make any reply to this invitation?

Counsel objects as incompetent and immaterial.

A. Yes, sir.

Q. What reply did she make?

Same objection.

A. That she would at once wind up her affairs in Washington, and come back and live with Mr. Jerry Seale and family.

Q. To whom was that reply made?

Counsel objects as incompetent.

A. To Mrs. Lizzie Seale and Mr. Jerry Seale.

57 Q. This invitation that you have testified about, was that made in your presence?

Same objection.

A. Yes, sir.

Q. Now, who was present at the time that this invitation was extended?

Counsel objects as having already been testified to by this witness and as being incompetent and immaterial.

A. Mrs. Lizzie Seale, Mr. Jerry Seale, Mrs. Lillie Davis and Mrs. Sarah Smith.

Q. And yourself? —. —.

Q. Within your knowledge, well, what has been the business of Mr. Jerry Seale as far back as you can remember, Mrs. Davis? A. You mean as far back as I can remember? As far back as I can remember, the railroad business.

Q. What has he been doing? A. A clerk at the depot.

Q. Where? A. Okolona, Mississippi, Mobile and Ohio Depot.

Q. Within your knowledge, has he ever studied or practiced law?

Counsel objects as incompetent and immaterial.

A. No, sir.

Q. Did you ever hear Mr. Jerry Seale discuss the laws of inheritance of the District of Columbia?

Counsel objects as incompetent and immaterial.

A. No, sir.

Q. Within your knowledge, did Mr. Jerry Seale ever execute more than one instrument of writing at the request of Mrs.  
58 Sophia Seale?

Counsel objects as immaterial and incompetent.

A. No, sir.

Q. When did you first see this instrument of writing that Mrs. Sophia Seale requested Mr. Jerry Seale to sign?

Same objection.

A. Monday afternoon, December 30, 1907.

Q. During the months of December, 1907, and January, 1908, what was the physical condition of Mr. Jerry Seale and the state of his health?

Counsel objects as this calls for an opinion of the witness and no foundation has been laid to show her competency to testify.

A. Very feeble; just able to be up, and not able to get out of the house.

Q. For about how long had he been in that condition? A. Since the February before, 1907.

Q. For how long after that time did this general physical condition continue?

Counsel objects as immaterial.

A. Up to the present time.

Q. Were you residing at the home of Mr. Jerry Seale when he learned of the death of Mr. Jesse N. Seale? A. Yes, sir.

Q. How did the death of his son seem to affect him?

Counsel objects as immaterial and incompetent and as calling for the opinion of the witness.

A. It prostrated him; he was heartbroken over it.

59 Q. For about how long after that death did he appear to remain so affected?

Same objection.

A. Well, up to the present.

Q. What evidences of grief did he manifest?

Same objection.

A. He cried all the time. He cried every time his name was mentioned.

Q. Were any of these evidences of grief manifested during the visit of Mrs. Sophia Seale?

Same objection.

A. Yes, sir.

Q. To what extent?

Same objection.

A. Every time he would see her or talk with her——

Q. He would what? A. During the visit every time he would see Mrs. Seale.

Q. Were you present when Mr. Jerry Seale first saw Mrs. Sophia Seale on her arrival on the aforesaid visit? A. Yes, sir.

Q. Describe how he appeared and acted, and what he said and did.

Counsel objects as immaterial and incompetent.

A. He didn't say anything. They threw their arms around each other's necks and cried, and said nothing for several minutes.

Q. Now, going back to the time that Mrs. Sophia Seale made this request of Mr. Jerry Seale to execute this instrument,  
60 and made this statement about which you have testified, describe how Mr. Jerry Seale appeared and acted, and state what, if anything, he said and did.

Same objection.

A. He didn't do anything, but cried most of the time.

Q. Just the time she made this request? A. He didn't do anything except just to cry.

Q. Now, did this appearance of grief on the part of Mr. Jerry Seale continue or cease during the visit of Mrs. Sophia Seale? A. Continued.

Q. I believe that you stated that you have resided all your life in Chickasaw County, at Okolona? A. Yes, sir.

No cross examination.

Witness Dismissed.

Counsel for the defendant moves to strike out the testimony of the witness in so far as it relates to conversations on the part of Mr. Jerry Seale, the complainant, and Mrs. Sophia Seale, the decedent, relative to the transactions which constitute the issue in this case; and further moves to strike out all testimony as to the condition of Mr. Jerry Seale at the time of the visit of Mrs. Sophia Seale, beginning the twenty-ninth of December, 1907, and extending over a period of several weeks subsequent thereto on the ground that the  
61 testimony is incompetent to prove any issue in this case, and falls under the prohibition of testimony as to statements of deceased persons, parties to such transaction.

Mrs. SARAH SMITH, twenty-nine years old, a resident of Okolona, Mississippi, being duly sworn, deposes and says:

On direct examination by Mr. BERNE:

Q. How long have you resided here? A. Almost all my life.

Q. Are you in any way related to Mr. Jerry Seale, the plaintiff in this case? A. My father.

Q. Are you related in any way to Mrs. Lizzie Seale? A. She is my mother.

Q. Were you related in any way to the late Jesse N. Seale? A. He was my half brother.

Q. Was Mr. Jesse N. Seale ever married? A. Yes, sir.

Q. Were you present at the wedding? A. Yes, sir.

Q. Please give the name of his wife. A. Sophia Spratt Seale.

Q. Her maiden name was Sophia Spratt? A. Yes, sir.

Q. Is she living or dead? A. She is dead.

62 Counsel for the complainant here states that counsel have agreed on the time and place of her death, and on the age of Jesse N. Seale.

Q. With whom, or where, did you make your home in the months of December, 1907, and January, 1908? A. In Okolona.

Q. With whom, if anyone? A. With my mother and father.

Q. In their home? A. Yes, sir, in their home.

Q. How long had you—you had been raised in that home as I understand it? A. Yes, sir.

Q. During their marriage, did J. N. Seale and Sophia Seale ever visit Mr. Jerry Seale at his residence?

Counsel objects as immaterial and incompetent.

A. Why, yes, sir, she came every year, and he,—well he came nearly every year until just the two years before he died. After he moved to Washington, he didn't come so often. He came right often as long as he lived on this road, but——

Q. That is, the Mobile and Ohio? A. Yes, sir.

Q. What were the apparent feelings between Mr. Jerry Seale and his family on the one hand and Jesse Seale and his wife on the other?

Counsel objects as immaterial and incompetent, and as calling for the witness' opinion.

A. They were apparently as kindly as possible; seemed to get along all right.

63 Q. Now, after the death of Mr. Jesse N. Seale, did Mrs. Sophia Seale ever visit Mr. Jerry Seale at his residence in Okolona? A. Yes, sir.

Q. When was that visit made? A. On December 29th. She came on the 29th of December, 1907.

Q. How long did she stay? A. Let's see,—it lacked about three days of being three weeks.

Q. Were you present at the home of Mr. Jerry Seale during that visit. A. Yes, sir.

Q. Now, during that visit, did Mrs. Sophia Seale ever make any statements to you, or in your presence concerning the financial condition of the estate of her deceased husband, Jesse N. Seale?

Counsel objects as incompetent and inadmissible under the rule governing the admissibility of evidence in the District of Columbia.

A. She did.

Q. Did she make such a statement more than once?

Counsel objects for the same reason and because the question is leading.

A. She did.

Q. Who was present when this statement was first made?

Counsel objects as immaterial.

A. My mother and myself.

64 Q. To whom was the first statement made?

Counsel objects to any testimony relative to any statement made by the decedent to witness or witness' mother.

A. To my mother.

Q. Now please repeat that statement.

Counsel objects as incompetent.

A. Mamma asked her the question; she said, "Sophia, I hope Newt has left you well fixed," and she said, "Well, I don't know." "Newt had a life insurance policy, but I don't know the amount of it, and, besides, he had borrowed some money, and had given the policy as security." She didn't know the amount of money borrowed on the policy; she said, "You know Newt has been very extravagant, and has spent a great deal of money, and after his debts have been paid, I don't know that there will be anything left, and I will be compelled to work for a living."

Counsel moved to strike out the answer, being a statement of a deceased person.

Q. What, if anything, did she say as to the amount of the policy?

Same objection.

A. She didn't know.

Q. She said she didn't know? A. She didn't know the amount of the policy.

Q. Now, in regard to the second time that statement was made, when did she make that statement the second time?

Same objection.

A. The next day, the 30th of December, 1907.

Q. Where did she make it?

65 Same objection.

A. In my father's room in his home.

Q. In his home? A. Yes, sir, in his home.

Q. To whom was that second statement made?

Same objection.

A. To my father.

Q. In whose presence was it made?

Same objection.

A. My mother, and sister, Mrs. Davis and I were standing just outside the door and heard it.

Q. And also Mr. Jerry Seale? A. Yes, sir, the statement was made to him.

Q. Now, under what circumstances was that statement made?

Same objection.

A. In connection when she presented the paper, when she presented the paper for him to sign.

Q. Now, please repeat that statement.

Counsel objects as immaterial and incompetent.

A. She said, "Father, here is a paper that Mr. Ackert sent to me for you to sign," and said, "I can't touch a dollar of Newt's estate until you sign it." Then she said, "Under the laws of the District of Columbia, when a man dies without a will, all of his estate goes to his father, and his wife can have none of it." And she also said that Mr. Ackert said it would save all court costs and a good deal of trouble

66 by his signing this paper. She also repeated that same statement that Newt had been very extravagant, and had spent a good deal of money, and after his debts are paid she didn't know if there would be anything left—little or nothing.

Q. Did Mrs. Sophia Seale, in your presence, at the time of this visit, make any statements as to the law of inheritance in the District of Columbia?

Counsel objects for the reasons heretofore given.

A. Why, yes, sir.

Q. When did she make this statement?

Same objection.

A. When she presented the paper.

Q. What paper? A. The paper for him to sign.

Q. Whom to sign? A. My father, Mr. Jerry Seale.

Q. Where was this statement made? A. It was in his own room.

Q. And to whom was it made? A. To Mr. Jerry Seale.

Q. During the time of this visit, did Mrs. Sophia Seale make any statement in your presence as to whom the property of her lately deceased husband would descend in the District of Columbia.

Counsel objects as this asks for a statement of a deceased person.

A. She did.

Q. When did she make this statement?

Same objection.

67 A. At the same time that she presented that paper for him to sign.

Q. To whom was it made?

Same objection.

A. To Mr. Jerry Seale.

Q. What did she say?

Counsel objects as incompetent asking for a statement by one



party to a transaction who has since died and is unable to contradict the statement of witness.

A. Why, she said "His Father."

Q. It would descend to his father? A. Yes, sir.

Q. Did Mrs. Sophia Seale, during the time of her visit, make any statement in your presence as to her own financial condition at that time?

Counsel objects as incompetent.

A. She did.

Q. When did she make this statement? A. The day she came. She said she didn't have anything of her own.

Q. Who was present when she made this statement? A. My mother and I.

Q. Please repeat the statement.

Counsel objects as incompetent and immaterial, as calling for evidence prohibited by section 1064 of the code of law of the District of Columbia.

A. She said she didn't have anything of her own that she knew of.

Q. Did she ever make that statement after that?

Same objection.

68 A. Yes, sir, she made it a number of times. She made it all during the visit.

Q. The next time she said it?

Same objection.

A. The next day, when she presented the paper for papa to sign.

Q. Did Mrs. Sophia Seale, at the time, ever make any statement in your presence, as to her obtaining employment?

Counsel objects for the reasons that the question is leading, suggestive, incompetent and immaterial.

A. Yes, sir, she did.

Q. When did she make this statement?

Same objection.

A. The first day she came, the 29th day of December, 1907.

Q. And where was it made? A. In this home.

Q. In whose presence? A. Mother and I.

Q. What reason, if any did she give for seeking employment?

Counsel objects as immaterial and incompetent.

A. She didn't have any means of support and would be compelled to work for a living.

Q. Now, did Mrs. Sophia Seale, in your presence, ever request Mr. Jerry Seale to execute or sign any instrument of writing?

Counsel objects as immaterial, leading and incompetent.

69 A. Yes, sir.

Q. Did she then state what that instrument was?

Counsel objects for reasons before given.

A. Why, she just said, "Here is a paper that Mr. Ackert sent for him to sign." That the property all went to papa.

Q. What, if anything, did she say in connection with this request?

Counsel objects as incompetent.

A. She said, "Father, here is a paper that Mr. Ackert sent me for you to sign," and said "I can't touch a dollar of Newt's estate until you sign it. Under the laws of the District of Columbia, when a man dies without a will or without children, all of his property goes to his father, and I can't touch any of the money until you sign this." That Mr. Ackert said it would save court costs and so forth by his signing this paper. She also went on and repeated the same statement about, shall I go on—well, she said Newt had been very extravagant, and had spent a lot of money, and that he had an insurance policy, and that he had borrowed money on it, but she didn't know how much it was for, nor how much he had borrowed on the policy, and that she had applied for a position in Washington, in the Library, and if she got it, it would give her some means of support, and I believe that is about all.

Q. Now, when was that request made? A. The day that she presented the paper, the 30th day of December.

70 Q. What year? A. 1907.

Q. Where was it made? A. In the home, in papa's room.

Q. Who was present? A. Mamma, Lil (Mrs. Davis), myself and papa.

Q. Mr. Jerry Seale? A. Yes, sir.

Q. Did Mr. Jerry Seale make any reply to that request? A. Yes, sir.

Q. Please state what he said.

Counsel objects as it calls for a statement made by one of the parties to this transaction.

A. He said, "Sophia, I am so feeble this evening that I am not able to go up town, and attend to this for you. In the morning, if I am better, I will go and attend to it for you.

Q. Did he ever execute that instrument?

Counsel objects as the best evidence will be the instrument itself.

A. Yes, sir.

Q. Now, in regard to this statement and this request that was made at the time this instrument was presented to Mr. Jerry Seale for his signature, please state whether or not that appeared to have any effect on Mr. Jerry Seale.

Counsel objects as incompetent, asking for the opinion of this witness.

A. They did.

Q. Please state how he appeared to be affected?

Same objection.

71 A. He burst into tears and cried.

Q. During the visit aforesaid, of Sophia Seale, was an invitation of any character extended to her?

Counsel objects as immaterial and incompetent.

A. Yes, sir.

Q. Was that invitation extended in your presence? A. Yes, sir.

Q. By whom was it extended? A. By mamma, and each and every one of us, Lil (Mrs. Davis) and myself and papa.

Q. What was that invitation?

Same objection.

A. That she was more than welcome to come and live with us; that she was welcome to all we had, and we would be glad to have her here without any cost or expense to her.

Q. For what reason, if any was that invitation extended?

Counsel objects as incompetent.

A. Because we thought that she didn't have any means of support and were willing to share what we had with her.

Q. Did Mrs. Sophia Seale make any reply to that invitation?

Same objection, being the statement of a deceased person prohibited by law.

A. She did.

Q. What answer did Mrs. Sophia Seale make?

Same objection.

72 A. She said she would if she failed to secure this position in the Library that she hoped for, that she would come back and make her home with us.

Q. Who, if anyone, was present when this invitation was extended?

Same objection.

A. Well, mamma and I and Mrs. Davis, and I think Mr. Davis also heard her say that she intended to come back and live with us.

Q. So far as you know, did Mr. Jerry Seale ever execute more than one instrument of writing for Mrs. Sophia Seale? A. No, sir.

Q. Now, how long after the arrival of Mrs. Sophia Seale on this visit did you first see that paper that she asked Mr. Seale to sign?

Counsel objects as incompetent.

A. The next day, the 30th day of December, 1907.

Q. Under what circumstances did you see this instrument? A. When she handed it to papa for him to sign.

Q. Now, you have testified as to certain statements made by Mrs. Sophia Seale in the presence of you and your mother on the day of her arrival; did you ever communicate those statements to anyone?

Counsel objects as immaterial.

A. Why, yes, sir, mamma and I talked about it at the time.

Q. To any other person?

Counsel objects as immaterial and incompetent.

73 A. I don't believe I did, but mamma told papa, she said.

Counsel moves to strike out the answer as hearsay.

Q. Were you present when Mrs. Seale communicated those statements? A. No, sir.

Q. Well, all I want is your personal knowledge. —. —.

Q. During the months of December, 1907, and January, 1908, what was then physical condition of Mr. Seale, and what was the general condition of his health?

Counsel objects on the ground that there is no foundation laid to show the competency of this witness to testify to his physical condition at the time.

Q. At the time of this visit of Mrs. Sophia Seale, how long had you been continuously residing at the home of Mr. Jerry Seale? A. I had been here all my life except a short time.

Q. During that time were you cognizant of the general state of his health, his physical condition? A. Yes, sir.

Q. What was the state of his health at this time.

Counsel objects as incompetent.

A. Very feeble, and not able to leave the house.

Q. For about how long had he been in that condition? A. Since the preceding February.

Q. Please state whether or not he was confined to his home at the time of that visit.

Same objection.

A. He was.

74 Q. And for about how long had he been so confined prior to that time? A. From the preceding February.

Q. You were at the home during that time? A. Yes, sir, all of that time.

Q. And were cognizant of his condition? A. Yes, sir.

Q. How long did that general state of health and physical condition continue after this visit? A. Up to the present time.

Q. Since that visit of Mrs. Sophia Seale you have resided in the home of Mr. Jerry Seale, and have been cognizant of his physical condition?

Same objection, that she is not competent to testify as to what the physical condition is.

A. Yes, sir.

Q. How did his physical condition appear to you to be during the time you have testified as to his ability to move about? A. Why, he was barely able to leave the house. He hardly ever went out at all. He wasn't able; he was too weak.

Q. Were you residing at the home of Jerry Seale at the time that he received knowledge of the death of Jesse Seale? A. Yes.

Q. Did the death of Jesse Seale appear to affect Mr. Jerry Seale?

Counsel objects as leading and incompetent.

A. Yes, sir.

75 Q. To what extent did it seem to affect him? A. O, he just sobbed like his heart would break; said he was sorry that he had lived to see that day.

Q. Now for about how long after he learned of this death did he appear to be so affected? A. Up to the present time.

Q. What evidence of grief did he manifest? A. Why, he cried all of the time.

Q. Were any of these evidences of grief manifested during the visit of Sophia Seale?

Same objection.

A. Yes, sir.

Q. To what extent? A. Why whenever he would see her he looked like he couldn't stand it; he grieved so, cried.

Q. Now, Mrs. Smith, were you present when Mr. Jerry Seale first saw Mrs. Sophia Seale on the occasion of the visit of which you have testified? A. Yes, sir.

Q. Please describe how he appeared and acted when he first saw her. A. Well, when he came in the room, she met him at the door, and she threw her arms around his neck, and he did her, and they just sobbed, both of them,—didn't speak a word.

Q. How long did that continue? A. Why, for several minutes.

76 Q. Did he say anything? A. I don't believe that he said anything; I don't remember anything that he said; he couldn't talk.

Q. Now, at the time that Mrs. Sophia Seale requested Mr. Jerry Seale to sign this instrument that you have testified —, please describe how he appeared and acted.

Counsel objects as this calls for the opinion of the witness.

A. He was very much affected.

Q. Appeared to be? A. Yes, sir.

Q. Now, did these appearances of grief, of which you have testified, that Mr. Jerry Seale exhibited when he first saw Mrs. Sophia Seale. extend—or for how long did it extend? A. All during her visit, and up to the present time. He still grieves.

No cross-examination,—witness dismissed.

Counsel for the defendant moves to strike out the testimony of the witness in so far as it relates to conversations on the part of Mr. Jerry Seale. the complainant, and Mrs. Sophia Seale, the decedent, relative to the transactions which constitute the issue in this case; and further moves to strike out all testimony as to the condition of Mr. Jerry Seale at the time of the visit of Mrs. Sophia Seale, beginning the twenty-ninth of December, 1907, and extending over a period of several weeks subsequent thereto, on the ground that the testimony is incompetent to prove any issue in this case, and falls under the prohibition of testimony as to statements of deceased persons, parties to such transaction.

77 T. P. DAVIS, thirty-five years old, a resident of Okolona, Mississippi, being duly sworn, deposes and says:

On direct examination by Mr. BERNE: .

Q. How long have you resided here? A. About twelve years.

Q. Are you acquainted with Mr. Jerry Seale, the plaintiff in this case? A. Yes, sir.

Q. How long have you known him? A. Since I came here twelve years ago—about that time.

Q. What official position, if any, did you hold in January, 1908. A. Deputy Clerk of the Circuit Court of Chickasaw County, Mississippi.

Q. Were you acquainted with Jesse Newton Seale in his lifetime? A. Yes, sir.

Q. With his wife, Sophia Seale? A. Yes, sir.

Q. With whom, if anyone, did you make your home in December, 1907, and January, 1908? A. I was living here in the house with Mr. Seale.

Q. Mr. Jerry Seale? A. Yes, sir.

Q. Do you know whether J. N. Seale is living or dead? A. I know he is dead.

Q. After his death did his widow visit Mr. Jerry Seale? 78 A. Yes, sir.

Q. Did you ever take her affidavit to any instrument of writing? A. Yes, sir.

Q. About when did you do so, Mr. Davis? A. The 8th day of January, 1908.

Q. Where did you do so? A. Right here in this room.

Q. At the home of Jerry Seale? A. Yes, sir.

Q. Please describe what was said and done by Mrs. Sophia Seale, if anything, in connection with the taking of this affidavit.

By COUNSEL FOR THE DEFENSE: "If the question goes to a transaction which is the subject matter of this cause, then the question is objected to as being incompetent, because it calls for a conversation of a deceased person."

A. Why, she said, "I want to go to town, this afternoon," and I asked her, "For what?" and she said "I want to go before a Notary," and she said, "Why you are a Notary, aren't you," and I said "Yes." "Well," she said, "I have some papers here that I want to swear to, and sign before a Notary," and I said, "You sign them here, and I will take them to the office and attach the seal," and she said "No, you bring the seal to the house when you come."

Q. Did she sign the instrument in your presence? A. Yes, sir.

Q. Did she sign the instrument in your presence? A. 79 Yes, sir.

Q. Did you swear her to it? A. Yes, sir.

Q. Did you sign it in your official capacity? A. I did, sir.

Q. When did all this take place? A. It was between one and two o'clock on January 8, 1908.

Q. At the time of her request? A. Yes, sir.

Q. What did you do after you signed the paper in your official capacity? A. Why, I went to the office and got the seal.

Q. Did you take the instrument with you or not? A. No, sir.

Q. Why didn't you take it with you? A. She said she would prefer my bringing the seal to the house.

Q. Did you bring the seal to the house? A. I did, sir.

Q. When did you bring the seal to the house? A. Why, as soon as I went to the office and back.

Q. Then attached the seal to this affidavit? A. Yes, sir.

Q. Did you learn the contents of that instrument to which she swore?

Counsel objects.

A. No, sir.

Q. Did you ever have that instrument in your possession?

80 A. No, sir.

Q. I believe you stated that you saw her sign that instrument? A. I saw her sign it, yes, sir.

Q. When she signed that instrument, and when you swore her to it, and you signed it in your official capacity, was that instrument open or folded? A. Why, it was folded.

Q. Now, please describe how it was folded. A. Why, it was folded that I couldn't see anything except the place for her to sign, and myself, and she said "Here's for you to sign, Porter, and I sign here." That is all I saw.

Q. When you attached the seal to that instrument, how was that instrument, was it folded or unfolded? A. It was folded.

Q. Was it folded the same as it was before? A. Yes, sir.

Q. Was she present when you attached the seal? A. She was.

Q. How long before you attached this seal was that instrument in your possession? A. She held it.

Q. Please state how you attached the seal, and where? A. Just there, about — Mr. Mecklenberger is. She said, "Here, you put your seal here."

Q. And you say that when you put the seal on it, it was so  
81 folded that you couldn't see the contents? A. Yes, sir, it was folded as it had been before.

Q. After you attached the seal, what did you do with that instrument, did you take it, or did she take it? A. She had it, and she kept it.

Q. Do you know what, if anything, she did with it? A. To the best of my knowledge she sealed it up in an envelope and gave it to me to mail.

Q. Do you recollect the address on that envelope?

Counsel objects as the best evidence would be the envelope itself. It has not been shown that the envelope has been lost and no call has been made upon counsel nor have they been notified to produce.

A. Mr. C. H. Ackert.

Q. At what place? A. Washington, D. C.

Q. What did you do with that envelope after she delivered it to you? A. Why, I carried it to the post-office and mailed it.

Q. Put it in the United States Mail? A. Yes, sir.

Q. Was the envelope sealed or unsealed? A. It was sealed.

Q. Did you ever take the affidavit of Sophia Seale to any other instrument of writing than the one mentioned? A. I don't remember.

Q. Are you certain of it? A. I don't think I ever did.

82 Q. Can you state positively or not? A. If I ever did, I can't say.

Q. Did she ever request you, on any other occasion to bring the seal to the house? A. Only once.

Q. Did she ever appear in your office, and ask you to take her affidavit to any paper? A. No, sir.

Q. Did you ever take her acknowledgment to any other paper? A. No, sir.

Q. Where were you,—I believe you stated that you were residing at the home of Jerry Seale at the time of this visit, about how long had you resided there, about a year or two? A. Two or three years.

Q. How often did you see Mr. Jerry Seale? During the year or two prior to this visit, and up to, and past this visit? A. Every day.

Q. What was his physical condition and general state of health in December, 1907, and January, 1908? A. He was in very bad health.

Q. How long had he been that way? A. Since February.

Q. What year? A. 1907.

83 Q. Well, was he able, during the time from February, 1907, to the following January, was he able to attend to his business? A. He was confined to the house.

Q. Was he there all the time? A. Yes, sir.

Q. Were you present when Mr. Jerry Seale learned of the death of Jesse N. Seale? A. Yes, sir.

Q. How did that death seem to affect Mr. Jerry Seale?

Counsel objects as asking for the witness's opinion.

A. Why, it broke him all up. He was torn all to pieces by it, broke down.

Q. To what extent, and for how long after that time was he so affected? A. Why, up to the present time, sir.

Q. Now what evidences of grief did he manifest at the time that he learned of the death of his son? A. He broke down and cried.

Q. How long has that evidence of grief lasted? A. Why, if you speak of his son to-day,—his death—he will grieve about it.

Q. Were any of these evidences of grief manifested during the visit of Sophia Seale? A. Yes, sir.

Q. To what extent? A. He was just completely broke up,—he just broke down and cried.

Q. Were you present when Mr. Jerry Seale first met Mrs. Sophia Seale on the occasion of that visit? A. Yes, sir.



84 Q. Please describe how he acted when he first—— A. They just fell in one another's embrace, and not a word was said that I could hear. I come up with her from the train,—brought her in the house.

Q. Now, please state if anything was said, and how he acted. A. Why, he was just perfectly exhausted, and she, too, at the time, it seemed that way.

Q. Did he cry or not? A. Yes, sir, he cried.

Q. How long did they remain in that condition? A. Why, about two or three minutes.

Q. Are you familiar, Mr. Davis, with the custom that prevails in this community—— A. Yes, sir, I think so.

Q. Now, please don't answer the question before I finish it. Are you familiar with the custom that prevails in this community as to whether or not an officer taking an affidavit to an acknowledgment of an instrument, takes the instrument to his office to attach the seal, or takes the seal and attaches it at the place where the instrument was executed, after the instrument was executed?

Counsel objects as immaterial.

Q. Are you familiar with that custom?

Counsel objects stating that custom would not alter the present case.

Q. Please state what that custom is.

Counsel objects as immaterial and incompetent.

85 A. Why, I never—it is the only case I ever carried the seal out of the office.

Q. I am asking you the custom. A. Why, that seemed to be the custom.

Q. What? A. Of going to the residence and having the affidavit signed, and take the paper to the office, and attach the seal.

Q. And then return it to the owner? A. Yes, sir.

Cross-examination by Mr. AMBROSE:

Q. Is there any prohibition against your taking the seal from the office and affixing it to a document at the place where the acknowledgment?

Counsel objects as this calls for secondary evidence.

A. No, sir.

Q. Is there any reason, under the laws of your state, or under your official duty why you should read any document to which you are taking an affidavit?

Counsel objects as this calls for secondary evidence.

A. I don't know, sir.

Q. Is there any custom in this jurisdiction in which you are an officer which requires you to have a knowledge of an instrument which you attest the signature of? A. I don't know.

Q. In your official duty as an attesting officer, do you acquire knowledge of the contents of instruments which come before you always? A. No, sir.

Q. As a rule? A. No, sir, I can't say that it is.

Q. Then there was no reason, in this instance, why you should know what the contents of the instrument which you attested for Mrs. Seale was? Was there?

Counsel objects because this calls for a conclusion.

A. I cannot say that there was.

Q. Is it usual for parties who wish their signatures attested to instruments to indicate to you where you subscribe as attesting officer, and the place for your seal? A. Well, that is the only case I have ever had any objection.

Q. That isn't the question, and it isn't the intention or the reason of the question. A. Well, no, sir.

Q. You have had very little familiarity with the attesting of foreign instruments, have you not, for use in foreign courts? A. Yes, sir.

Q. Were there any other persons present in this room when Mrs. Seale signed this document? A. Why, I don't remember.

Q. There may have been some, for all you know, some members of the family? A. Yes, sir.

Q. Did her conduct on that occasion give rise to any suspicion of her actions in the premises? A. I don't know, hardly.

Q. If it had, would it not have been your duty as attesting officer to question into the subject matter? A. No, sir, it wouldn't.

Q. Would it not have been your duty to refrain from attesting an instrument, had you reason to believe that the instrument was to be used for an unlawful or a wrongful purpose? A. No, sir, I can't say that it would.

Q. Then, in other words, you would attest any instrument brought to you, whether you knew, or didn't know that the instrument was of an illegal character? A. I suppose so.

Redirect examination by Mr. BERNE:

Q. Mr. Davis, in taking an affidavit, all that is necessary is, under the law, for the witness to sign the affidavit, and you swear him, and sign it?

Counsel objects.

A. That is all, sir.

Q. Now, Mr. Davis, was ever any other instrument than this that you attested so folded that you couldn't see its contents?

Counsel objects as immaterial.

A. No, sir.

Q. Do you recollect who was present when Mrs. Sophia Seale asked you to take this affidavit? A. Why, I think my wife and Mrs. Smith.

88 Q. Who is your wife? A. Lil, Mrs. Davis.

Q. Are you certain that they were present? A. No, sir, I think they were.

Q. You were present when Mrs. Seale requested—during the entire time from the request for you to take this affidavit until the time she signed it, and you signed it as an officer and returned it to her, who was present? A. Why, Mrs. Smith and Mrs. Davis.

Q. That is the best of your recollection? A. Yes, sir.

Q. You are not positive? A. No, sir.

Recross-examination by Mr. AMBROSE:

Q. You are, then, a son-in-law of Mr. Jerry Seale, the plaintiff in this case? A. Yes, sir, I am.

Witness dismissed.

Counsel for the defendant moves to strike out the testimony of the witness in so far as it relates to conversations on the part of Mr. Jerry Seale, the complainant, and Mrs. Sophia Seale, the decedent, relative to the transactions which constitute the issue in this case; and further moves to strike out all testimony as to the condition of Mr. Jerry Seale at the time of the visit of Mrs. Sophia Seale, beginning the twenty-ninth of December, 1907, and extending  
89 over a period of several weeks subsequent thereto, on the ground that testimony is incompetent to prove any issue in this case, and falls under prohibition of testimony as to statements of deceased persons, parties to such transaction.

Mrs. LILLIE DAVIS, recalled for further direct examination deposes and says:

By Mr. BERNE:

Q. Were you ever present when Mrs. Sophia Seale made an affidavit of any kind before Mr. T. P. Davis, as deputy clerk of the circuit court of Chickasaw County, Mississippi? A. Yes, sir.

Q. When was that to the best of your recollection? A. Well, she had been here, I think, three or four days. It was three or four days after she came.

Q. Where did that request occur? A. In Mr. Jerry Seale's house.

Q. Who was present? A. Mr. Davis, and Mrs. Sarah Smith, and Mrs. Lillie Davis were present.

Q. Please state what was said and done by the parties at that time.

Counsel objects to any statement by the deceased person and as immaterial.

A. Mrs. Sophia Seale told Mr. Davis that she had a paper that she wanted to sign, would have to sign it before a Notary, and he said he could sign it for her as he was a Notary, so she folded the  
90 paper, I don't exactly remember how it was folded, so that the contents could not be seen, and signed it, and told him to sign it "Here", and he said he would take it to the office

and affix the seal on it, and she told him she would rather he would bring the seal here, so he did bring the seal here and fixed it.

Q. Did—when he signed the instrument, who took it, did he take it or did she take it? A. No, sir, she had it on the table.

Q. Did she take it, or did he take it? A. She took it.

No cross-examination.

Witness dismissed.

### *Agreement.*

It is here agreed that Mrs. Sarah Smith would testify to the same facts as testified to by this witness, subject to the same objections.

Counsel for the defendant moves to strike out the testimony of the witness in so far as it relates to conversations on the part of Mr. Jerry Seale, the complainant, and Mrs. Sophia Seale, the decedent, relative to the transactions which constitute the issue in this case; and further moves to strike out all testimony as to the condition of Mr. Jerry Seale at the time of the visit of Mrs. Sophia Seale, beginning the twenty-ninth of December, 1907, and extending over a period of several weeks subsequent thereto, on the ground that testimony is incompetent to prove any issue in this case, and it falls under the prohibition of testimony as to statements of deceased persons, parties to such transactions.

91

### *Opinion.*

Filed December 31, 1909.

\* \* \* \* \*

The complainant in this case is a resident of the State of Mississippi, and he is the father of Jesse N. Seale, who departed this life in this city and District, November 11, 1907. At the time of his death, said Jesse N. Seale left surviving him, Sophia Seale, his widow, and the complainant, his father, but left no child or decedant. He left an estate, consisting of personal property and life insurance, aggregating about \$12,000.

The widow visited the complainant at his home in Mississippi about the 29th of November, 1907, and represented to him that under the laws of the District of Columbia, he was entitled to receive all the personal estate left by her husband, and that she had no property of her own, and would be wholly dependent upon her own labor for support; and that she would be left without a dollar of her late husband's estate, unless the complainant should assign the said estate to her; and also telling the complainant that her husband had been quite extravagant, and had spent a great deal of money. That he had a policy of insurance on his life, but that had been pledged by him as security, for a large amount borrowed by him, and that when his debts were paid, there would be little left of his property; and that it would save court costs and expenses if he would sign the written instrument which she brought him.

92       The complainant at that time was about 74 years old, in feeble health, and needy circumstances; and he avers in his bill, that he was greatly grieved at the recent death of his son, and having no knowledge whatever of the estate left by his son, or of the law of this District, and believing the representations of his said daughter-in-law, he executed the paper before a notary public; and at the same time, he and his wife invited his said daughter-in-law to come and make her home with them, which invitation his said daughter-in-law said she would accept, if she failed to get a certain position which she was then seeking in Washington.

The paper is made an exhibit with the bill; and it purports to transfer, set over, and assign, all his right, title, and interest, in and to his son's estate, and forever release and discharge said Sophia Seale, or any other person who may be appointed administratrix, from any accounting or liability to him, by reason of the distribution of his portion of the said estate to the said Sophia Seale. It is dated and acknowledged Dec. 31, 1907.

Shortly thereafter, to wit, March 10, 1908, the said Sophia Seale departed this life; and the defendant, Mary E. Birchett, a sister, is her administratrix, and also administratrix *de bonis non* of the estate of said Jesse N. Seale.

93       Shortly after her death, the complainant learned that his son's estate amounted to about \$12,000; that according to the laws of this District, he was entitled to only one-half of it; and that his said daughter-in-law was advised and fully knew what the estate was at the time she visited him, and obtained the said assignment; and that she also knew what the law was in this District, that she was entitled to one-half of the said estate, and the complainant was entitled to the other half.

The suit is brought to have the said transfer or assignment canceled or disregarded; and that he may have the share which the law gives him in his son's estate distributed to him.

The answer of the defendant, Mary E. Birchett, as administratrix, is made without personal knowledge of the various facts alleged in the bill; but she avers that she is advised and believes, that said Sophia Seale practiced no fraud, or made no misrepresentations, in the procurement of the assignment to her from complainant; and she denies the right of the complainant to have the assignment vacated, and to have any portion of the estate distributed to him.

Proof was taken by the complainant, and stipulations of counsel filed, from which it appears that the said Sophia Seale, on the 8th day of January, 1908, signed and made affidavit to a petition, to be filed in the Probate Court of this District, asking for letters of administration on her husband's estate, in which petition she then estimated the estate to be worth something over \$12,000, although in the original draft of the said petition, it was claimed that the policy of insurance of \$10,000 was for her benefit, and constituted no part of the decedent's estate; and which claim appears to have been stricken out when the petition was sworn to, on the 8th of January, 1908. The month of "November 1907" was also erased, or changed, to

94       "January 1908," in the jurat annexed to the said petition, as appears from the original filed in the office of the Register of Wills.

Complainant's counsel claims that the said Sophia Seale must have had this petition with her when she went to visit her father-in-law in Mississippi; and that the changes in it were made after she had procured his assignment to herself; and that it affords abundant evidence of her intention to deceive the complainant in the representations made by her as to the law, and as to the value of the estate left by her husband.

Counsel for the defendant contends that the complainant is bound to know the law, and that therefore a misrepresentation to him as to what the law of the District of Columbia was, should in no way affect the transfer made by him; and especially, that as she told him he was entitled to all of the estate, when in fact he was only entitled to one-half of it, her representation should not affect the bona fides of the transaction by which he assigned all to her.

In answer to this, it is claimed that what the law of another State or jurisdiction is, a citizen of one State is not bound to know; and that as to such laws, they are matters of fact, and must be proven as other facts are proven.

20 American & English Encyclopedia, 2nd Ed., 816.

Haven v. Foster, 9 Pickering, 112.

95       Whether the daughter-in-law actually intended to deceive her husband's father as to the law of this District, and as to the value of the estate, or not, I am forced to the conclusion, from the testimony, that he was deceived about the same, and that his sympathies were worked upon by the daughter-in-law, at a time when he was in weak bodily condition, and grieving for his only son, and feeling great sympathy for his daughter-in-law; and while he was advised that his title to the whole estate was secured to him by the law of the District, yet that he was also convinced that the estate was of a very inconsiderable amount; and his feeling that the law was unjust, as well as his misunderstanding of the character and value of the estate, led him to execute the paper in controversy.

If he had actually known that the estate was as stated afterwards in the petition filed in the Probate Court, and that the law gave half of that absolutely to the daughter, and the other half to himself, he might have regarded the law as being just, and would not have been induced by a feeling against it, or by feelings of charity for his daughter in her supposed helpless condition, to execute the said assignment.

I am inclined to think, however, that her statements as to the law, and as to the value of the estate, were wilfully made, and for the purpose of deceiving the complainant, and appealing to his sympathy and magnanimity; and that had the representations been confined to the actual truth, that the complainant would not have executed the paper in question.

The defendant stands only as the personal representative of the deceased daughter-in-law, and the court, entertaining this opinion,

96 would undoubtedly have set aside the transfer as against the daughter-in-law; such being the case, there seems to be no reason why it should not be set aside as against the defendant, and the distributees who would take under her.

If the fund is held by the defendant as the administratrix *de bonis non* of the estate of Jesse N. Seale, the distribution would be made of one-half of that estate to the complainant, and one-half to the estate of Sophia Seale; but if the fund is to be regarded now as in the hands of the defendant as the administratrix of Sophia Seale, then that estate, having been enriched by one-half that properly belonged to the complainant, that amount can be distributed to the complainant, without the necessity of being in fact restored to the estate of Jesse N. Seale.

I have not considered the question of costs, but shall be glad to have counsel consider that in the preparation of the decree.

JOB BARNARD, *Justice*.

97

*Final Decree.*

Filed January 4, 1910.

\* \* \* \* \*

This cause coming on to be heard upon the pleadings and the evidence, having been argued by the solicitors for the respective parties and duly considered, it is thereupon by the court, this 4th day of January, A. D. 1910, ordered, adjudged and decreed that the paper writing bearing date the 31st day of December, 1907, purporting to be an assignment to Sophia Seale, by the complainant Jerry Seale, of his right, title and interest in and to the estate of the late Jesse N. Seale, and to release and discharge the said Sophia Seale or any other person who might be appointed administrator of the estate of the said Jesse N. Seale from any accounting or liability to the said Jerry Seale, be, and the same hereby is, vacated and declared to be null, void and for naught held, as prayed in the bill in this cause, and that the defendant Mary E. Birchett, administratrix *de bonis non* of the estate of the said Jesse N. Seale do account to the complainant Jerry Seale for the distributive share of the said estate of the late Jesse N. Seale to which the said complainant is entitled.

It is further by the court adjudged, ordered and decreed that the complainant Jerry Seale do recover of the defendant Mary E. Birchett, in her capacity as administratrix of the estate of the late Sophia Seale, the costs of this cause, to be taxed by the Clerk.

JOB BARNARD, *Justice*.

98 From the foregoing decree, the defendant Mary E. Birchett, administratrix *de bonis non* of the estate of Jesse N. Seale, and administratrix of the estate of Sophia Seale, prays, in open court, an appeal to the Court of Appeals of the District of Columbia, which is allowed, and the penalty of the bond is hereby fixed at seven thousand dollars, to operate as a supersedeas, or at one hundred, to operate as a cost bond.

JOB BARNARD, *Justice*.

*Memoranda.*

January 25, 1910.—Appeal bond filed.

Time to file record in Court of Appeals extended from time to time to, and including, June 15, 1910.

99 *Directions to Clerk for Preparation of Transcript of Record.*

Filed May 19, 1910.

\* \* \* \* \*

The clerk will please include in the Record on the Appeal herein the following:

Bill.

Answer.

Replication (Mem.).

Testimony.

Opinion.

Decree.

Appeal.

Bond.

Extensions (Mems.).

WILLIAM E. AMBROSE,  
JOHN RIDOUT,  
*Attorneys for Defendant.*

*Memorandum.*

June 13, 1910.—Time to file Transcript on appeal extended from time to time, to and including September 26th, 1910.

100 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 99, both inclusive, to be a true and correct transcript of the record according to directions of Counsel herein filed, copy of which is made part of this transcript, in cause No. 27955 in Equity, wherein Jerry Seale is Complainant and Mary E. Birchett, Administratrix, &c. is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court at the City of Washington, in said District, this 8th day of June, 1910.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2228. Mary T. Birchett, adm'x, &c., appellant, vs. Jerry Seale. Court of Appeals, District of Columbia. Filed Sep. 23, 1910. Henry W. Hodges, clerk.





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No. 2228  
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MARY E. BIRCHETT, ADMRX *de bonis non* ESTATE  
OF JESSE N. SEALE AND ADMRX ESTATE OF SOPHIA  
SEALE, APPELLANT

JERRY SEALE, APPELLEE

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BRIEF FOR APPELLEE  
\_\_\_\_\_

J. DALLINGTON

*Solicitor*



IN THE  
**Court of Appeals, District of Columbia**

OCTOBER TERM, 1910.

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No. 2228.

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MARY E. BIRCHETT, ADMNX. *de bonis non* ESTATE  
OF JESSE N. SEALE, AND ADMNX. ESTATE OF SOPHIA  
SEALE, APPELLANT,

*vs.*

JERRY SEALE, APPELLEE.

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**BRIEF FOR APPELLEE.**

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STATEMENT.

This is an appeal from a decree of the court below vacating an assignment to Sophia Seale by the appellee of his interest in the estate of his deceased son Jesse N. Seale. The bill, filed July 24, 1908, alleges as follows:

That Jesse N. Seale died in Washington, D. C., November 11, 1907, intestate, leaving him surviving his widow Sophia Seale, and as his only next of kin the complainant, the estate of the son being entirely personal, aggregating the

sum of about \$12,400, and consisting principally of a life insurance policy; that, a few weeks after his death, his widow came to complainant's home, in Okolona, Miss., and requested him to execute an assignment to her of his interest in the estate, representing that under the laws of the District of Columbia, with which laws he was without familiarity, all the property of a childless intestate passed to the father, that the son had been extravagant, had spent much money, had borrowed a great deal of money on the life insurance policy, that there would be little property left after paying his debts, and that Mr. Ackert, his son's superior officer in the railway service, where he had been employed, had prepared the assignment for execution by complainant, by which means court costs and expenses of administration would be saved; that she, herself, was without means, and was then seeking a position in a library in order to earn a support for herself; that the complainant at the time was about seventy-four years of age, in exceedingly feeble health and in needy circumstances, but, being greatly grieved by the then recent death of his son, and believing the representations of the said Sophia Seale to be true, having himself no knowledge of the condition of his son's affairs, he executed the assignment; that he had learned shortly before filing his bill-that his son's estate was worth not less than \$12,400, that the District laws gave a one-half interest in the estate to his widow and the other half to the complainant, that the widow had been fully advised of the character and value of the estate prior to coming to Okolona, and that shortly thereafter she had filed in the Probate Court a petition for letters of administration, filed as Exhibit "A" to the bill, and had also filed the assignment obtained from the complainant in the manner above stated, after which she had obtained letters of administration upon the estate, had herself died on March 10, 1908, and had been succeeded by the appellant as ad-

ministratrix *de bonis non*, who also had obtained letters of administration on the estate of Sophia Seale; that the total indebtedness of the son exclusive of funeral expenses did not exceed \$1,000, that the share of the widow in the estate, without the assignment, would have been five or six thousand dollars, and that, being unencumbered and without family responsibilities, she would have been in far better financial condition than complainant himself would have been upon a division of the estate equally between them as provided by law, the bill praying that the assignment might be vacated and for general relief.

The answer of the appellant alleged that, as she was advised and believed, Sophia Seale had practiced no fraud and had made no misrepresentations in the procurement of the assignment, and called for strict proof as to the allegations of the bill, except that she admitted that she was the administratrix *de bonis non* of the estate of Jerry N. Seale and administratrix of Sophia Seale.

The testimony on behalf of the appellant is to the following effect:

That Sophia Seale visited the complainant at Okolona, arriving on the 29th day of December, 1907, and remained about three weeks. Jerry Seale, Record, p. 23; Lillie Seale Davis, Record, p. 26; Mrs. Sarah Smith, Record, p. 34.

That the complainant at the time, and since the preceding February, had had bronchial grippe and nervous prostration, was so weak and feeble as scarcely to be able to write his name or leave his house, and had been so prostrated and heartbroken over the death of his son as to cry at the mention of his name, falling into the arms of Sophia Seale on her arrival and sobbing until he was exhausted. Mrs. Elizabeth Seale, pp. 19-20; Jerry Seale, pp. 23-4; Mrs. Lillie Seale Davis, pp. 32-3; Mrs. Sarah Smith, pp. 40-41; T. P. Davis, pp. 44-5.

That he was without property except the house in which he lived, and which his wife kept as a boarding house, for the purpose of earning a livelihood. Mrs. Elizabeth Seale, pp. 20-21.

That Sophia Seale, the day following her arrival, requested the complainant to execute the assignment, stating it had been sent to her by Mr. Ackert to obtain its execution by him; that her husband had been very extravagant and had left very little; that under the law of the District of Columbia all the property went to the father, and Sophia Seale would not get a dollar unless he signed; that she had nothing; that she did not know the amount of the insurance; that she would have to work for her living, and that she was seeking employment in Washington because she had nothing to live upon; and that the complainant thereupon told her he was very weak and unable to sign the paper on that day, but would do so the next morning, and that he, his wife and his two daughters united in asking her to come and stay with them as long as she lived, without cost to herself, which she promised she would do if she failed to get the position in Washington for which she had applied. Mrs. Elizabeth Seale, pp. 13, 15, 16, 17; Mrs. Lillie Seale Davis, pp. 27-8, 29, 30, 31; Mrs. Sarah Smith, pp. 35-39.

That the complainant accordingly did execute the assignment on the following day. Jerry Seale, p. 24; Exhibit "B," p. 6.

It further appears from the record that, on the 8th day of January, 1908, Mrs. Sophia Seale signed and verified by her affidavit, in the house of the complainant, the petition for letters of administration which appears at pp. 4-5 of the Record (T. P. Davis, pp. 42-4). This paper, it will be seen upon examination (Record, pp. 4-5), though sworn to on the 8th day of January, 1908, had been prepared for execution as far back as November, the month in which her husband died, and set forth specifically the assets of his





estate, aggregating \$12,244, and that his only debts were his funeral expenses of \$224, and \$1,000 borrowed upon his insurance policy No. 973,241, in the Mutual Life Insurance Company of New York, for \$10,000, as, also, that he left him surviving Mrs. Seale, his widow, and the complainant as his only next of kin.

The foregoing are affirmatively found by the court below, in its opinion, to be the facts in the case.

The testimony of T. P. Davis and Mrs. Lillie Davis further shows that Mrs. Sophia Seale, in presenting the petition for administration to Mr. Davis for the purpose of having him take her affidavit, did so with the paper so folded that he could see only the place for her signature and his own; that, his official seal being at the court-house, where he was employed as deputy clerk, he proposed to take the paper there and affix it, but that Mrs. Sophia Seale requested that, instead of doing so, he would bring the seal to the house and affix it there, and that he did this at her request, though contrary to his usual custom in such matters; that she held the paper at the time he attached his seal to it, and to the best of his knowledge sealed it up in an envelope and gave it to him to mail to Washington. The affidavit was that she had read the petition, knew its contents, and that to the best of her knowledge, information and belief they were true (Record, p. 5).

The foregoing comprises all the evidence in the case, the appellant not calling Mr. Ackert, or the draftsman of the petition and of the assignment, or any other witness to show in what manner Mrs. Sophia Seale obtained those papers, at whose instance or from data furnished by whom they were prepared, and what circumstances, if any, existed which would be consistent with her representations to the complainant, notwithstanding their contents, that her husband was deeply indebted, that little or nothing would be left of his estate, that she had nothing and was seeking





employment as a means of livelihood, or any other of the statements made to the complainant and upon the faith of which the assignment was executed.

The testimony further shows, without contradiction, that the complainant had been, until his forced retirement on account of ill health, a clerk in a railway office, that he was without familiarity with the laws of the District of Columbia, had never transacted any business there, and had never been in the District except to pass through it once on the cars when on his way to New York.

Upon the foregoing state of the pleadings and evidence, the court passed the decree which will be found at p. 51 of the record, vacating the assignment and requiring appellant to account to the complainant for his distributive share in the estate of Jesse N. Seale, the decree being accompanied by an opinion which will be found at pp. 48-51 of the record.

In the view of counsel for the appellee, the case does not require further discussion to show that the decree below was right, and should be affirmed. The contention that the appellee, in his ill and enfeebled condition, and residing at a distance of 1,500 miles or more from the District of Columbia, was guilty of laches in not discovering the true facts of the case and bringing suit to vacate the assignment within the ten weeks which intervened between its execution and the death of Sophia Seale, finds no support in the authorities cited, nor in any which can be.

Respectfully submitted,

J. J. DARLINGTON,  
*Solicitor for Appellee.*